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2 Title Ins. Law § 18:1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:1. Introduction

The business of insurance is, with some limitations, exempted from federal law, and its regulation is left to the states. Though there is no federal legislation governing title insurance per se, federal antitrust, banking, and real estate settlement practice laws do have an impact on title insurers. See [§§ 15:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussing federal antitrust issues involving title insurers, [§§ 3:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussing both bank ownership of title insurance companies and [§§ 21:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) analyzing applicability of the Real Estate Settlement Procedures Act to title insurers.

State regulations may affect four types of entities that are involved in the sale of title insurance: (1) national title insurance corporations which underwrite title insurance policies for local subsidiaries, bar-related title assuring organizations,[1](#co_footnote_I7b86e523d6ee11ea8f41e1f6f2a) independent local title companies and abstractor and attorney agents; (2) local title companies which own title plants and perform title searches and examinations as agents for the underwriters whose title policies will be issued; (3) approved attorneys and abstractors who work as agents for national title insurance underwriters; and (4) bar-related title assuring organizations which most often underwrite their own policies, relying on title searches and examinations made by their attorney members. Each of these entities plays a role in the title insurance process and may be subject to state title insurance regulations.

The amount of regulation applicable to title insurers varies a great deal from state to state. Generally, title insurers are less extensively regulated than the general insurance industry. This is because most states expressly except title insurance from the coverage of general insurance statutes, though a few states regulate title insurers under general casualty insurance provisions. Title insurance statutes may be found codified with a state’s real property laws, with its general property and casualty insurance laws,[2](#co_footnote_I7b878160d6ee11ea8f41e1f6f2a) or with the state’s banking laws.[3](#co_footnote_I7b87a870d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7b86e523d6ee11ea8f41e1f6f2aa78) | *See* §§ [2:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a2&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [2:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a3&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7b878160d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-25-1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.66.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.010&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1561](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1561&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-62-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-62-108&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12340](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-102&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-45](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-45&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 908](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S908&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. ch. 624.608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.608&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-7-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-7-8&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-101&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-508](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-508&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 155/1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code Ann. § 27-7-3-2(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-2&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kan. Stat. Ann. § 40-1102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-1102&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. § 22:2092.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a2092.1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 709](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS709&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Insurance Code Ann., § 1-101; [Mass. Ann. Laws ch. 175, § 47](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S47&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Stat. Ann. § 500.7300](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7300&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. Ann. § 68A.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS68A.01&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-1 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-1-212](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-1-212&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1978](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1978&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 681A.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST681A.080&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6402&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-7-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-7-15&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.D. Cent. Code § 26.1-20-01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-01&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.01&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 709](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S709&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 731.190](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.190&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [R.I. Gen. Laws §§ 27-1-43](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000038&cite=RISTS27-1-43&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [27-2-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000038&cite=RISTS27-2-2&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.C. Code Ann. § 38-5-30](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-5-30&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-25-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-101&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. 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Code Ann. § 48.11.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.11.100&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [W. Va. Code § 33-1-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-1-10&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wis. Stat. Ann. § 627.05](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000260&cite=WIST627.05&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-5-109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-5-109&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7b87a870d6ee11ea8f41e1f6f2aa78) | [D.C. Code Ann. § 26-1301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000869&cite=DCCODES26-1301&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.22-010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-010&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Ann. Stat. § 381.009](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.009&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Vt. Stat. Ann. tit. 8, § 3301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000883&cite=VT8S3301&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). This probably is the result of title insurers having originally developed as departments of banks. *See* §§ [1:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a1&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [1:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a5&originatingDoc=If4f4eb1f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:2. Authority and roles of the state regulatory agency

Many states expressly authorize or require a state agency, usually the state insurance department or commission, to supervise the activities of title insurance underwriters and title insurance agents.[1](#co_footnote_I7b987150d6ee11ea8f41e1f6f2a) The regulatory agency’s supervision may extend to matters such as premium rates,[2](#co_footnote_I7b987151d6ee11ea8f41e1f6f2a) financial reserves,[3](#co_footnote_I7b987154d6ee11ea8f41e1f6f2a) the form of the insurance contract,[4](#co_footnote_I7b989862d6ee11ea8f41e1f6f2a) and, in some states, even to title agents’ tract indexes[5](#co_footnote_I7b989865d6ee11ea8f41e1f6f2a) and escrow accounts.[6](#co_footnote_I7b989867d6ee11ea8f41e1f6f2a) See §§ [18:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a6&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a7&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) considering the state regulatory agency’s licensure or certification of title insurance agents. See also §§ [18:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a8&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a15&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) examining the scope of business permitted for title insurance companies.

The director of the state regulatory agency is likely to be designated as attorney for service of process on any title insurer who has failed to appoint or maintain an attorney for service or whose certificate of authority has been revoked.[7](#co_footnote_I7b98bf74d6ee11ea8f41e1f6f2a) The director also may be the designated attorney for service on an unauthorized title insurer doing insurance business in the state.[8](#co_footnote_I7b98bf75d6ee11ea8f41e1f6f2a) Anyone who serves a title insurer through the director of the state regulatory agency must allege in their petition under what statutory authority the director is the insurer’s attorney for service.[9](#co_footnote_I7b98bf76d6ee11ea8f41e1f6f2a)

Many states have statutes authorizing the regulatory agency to promulgate rules and regulations governing the business of title insurance in the state. Usually, these statutes give the agency broad powers to adopt any rules and regulations necessary to implement the state’s title insurance statutes[10](#co_footnote_I7b98e680d6ee11ea8f41e1f6f2a) or to protect the public interest.[11](#co_footnote_I7b98e681d6ee11ea8f41e1f6f2a) Sometimes statutes require the regulatory agency to regulate title insurers in specific ways, e.g., to regulate the licensing of title insurers or policy forms and rates.[12](#co_footnote_I7b98e682d6ee11ea8f41e1f6f2a) Other statutes make the regulation of such matters permissive.[13](#co_footnote_I7b98e683d6ee11ea8f41e1f6f2a)

Rulemaking procedures must follow those prescribed for administrative rulemaking generally. For example, in some states the regulatory agency director must provide notice and a hearing before any new rule or regulation is adopted.[14](#co_footnote_I7b990d90d6ee11ea8f41e1f6f2a) The director may be statutorily permitted to adopt and enforce a rule or regulation without a prior hearing in an emergency situation, so long as a hearing is provided subsequently with opportunity for reassessment of the rule.[15](#co_footnote_I7b990d91d6ee11ea8f41e1f6f2a) In some jurisdictions, a rule or regulation promulgated by the agency director is without force until it has been certified and filed with the secretary of state or other state official.[16](#co_footnote_I7b990d92d6ee11ea8f41e1f6f2a)

Frequently, statutes authorize the state regulatory agency to examine title insurance corporations to determine whether they are in compliance with state laws, including laws regulating their financial condition.[17](#co_footnote_I7b990d93d6ee11ea8f41e1f6f2a) Some statutes make examination of title insurance underwriters and agents mandatory, either periodically or upon certain conditions.[18](#co_footnote_I7b9a1f00d6ee11ea8f41e1f6f2a) To discharge the obligation to examine, the director usually is given broad authority to inspect the premises, books, and papers of the company. If the regulatory agency’s examination report is to be made available to the public, the insurance company may have the right to appear first at a hearing and request modifications.[19](#co_footnote_I7b9a1f01d6ee11ea8f41e1f6f2a)

Regardless of where it is domiciled, a title insurance corporation must observe the insurance statutes and regulations of each state in which it wishes to do business in order to be permitted to bring a cause of action in that state’s courts. Regarding the regulatory agency’s obligation to examine title insurers, the director examining a foreign insurer doing business in the state usually may rely on the conclusions of the regulatory agency in the state where the insurer is domiciled.[20](#co_footnote_I7b9a1f02d6ee11ea8f41e1f6f2a)

The state regulatory agency also may be assigned the role of custodian for deposits of cash or securities if the state requires title insurers to make such deposits to ensure that they meet statutory capital and reserve minimums.[21](#co_footnote_I7b9a4610d6ee11ea8f41e1f6f2a) Additionally, because most states require title insurers to file rate schedules and policy forms, the regulatory agency may become the custodian for these filings. In some of these states, policy forms and/or rate schedules not only must be filed, they also must be approved by the state regulatory agency. See [§ 18:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a17&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on form filings, [§ 18:22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a22&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on rate filings, and [§ 18:29](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a29&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on deposit requirements.

State regulatory agencies may be authorized to take action when a title insurer has failed to comply with state law or agency regulations. For example, if the title insurer does not satisfy financial requirements or other insurance code provisions, the regulatory agency may be authorized to suspend the insurer’s license or certificate of authority.[22](#co_footnote_I7b9a6d21d6ee11ea8f41e1f6f2a) Another approach is that, if evidence is found of a title insurer’s fraudulent business practices, financial defalcation, or noncompliance with state law requiring the filing of insurance forms, a receiver or supervisor may be appointed to correct the problems.[23](#co_footnote_I7b9a6d22d6ee11ea8f41e1f6f2a) Further, upon an insurer’s failure to comply within 60 days from the service of a supervision order, an agency director may institute proceedings for the appointment of a liquidator.[24](#co_footnote_I7b9a6d23d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7b987150d6ee11ea8f41e1f6f2aa78) | *See* [Idaho Code Ann. §§ 41-2705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2705&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-2713](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2713&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-4&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3901.011](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3901.011&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 59; [Tenn. Code Ann. § 56-35-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-105&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2703.001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.001&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). In Illinois, the sale of title insurance is regulated by the Illinois Department of Financial Institutions. |
| [2](#co_fnRef_I7b987151d6ee11ea8f41e1f6f2aa78) | Discussed *infra* §§ [18:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a21&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a26&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7b987154d6ee11ea8f41e1f6f2aa78) | Discussed *infra* §§ [18:27](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a27&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a31&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7b989862d6ee11ea8f41e1f6f2aa78) | Discussed *infra* §§ [18:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a16&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a20&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7b989865d6ee11ea8f41e1f6f2aa78) | Discussed *infra* [§ 18:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a11&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7b989867d6ee11ea8f41e1f6f2aa78) | *See e.g.,* [Fla. Stat. Ann. §§ 626.2815](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.2815&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [626.8473](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8473&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [627.777](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.777&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) & [627.782](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.782&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (as amended by FL House Bill 643 2012); [Idaho Code Ann. §§ 41-2705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2705&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-2713](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2713&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7b98bf74d6ee11ea8f41e1f6f2aa78) | *See* [Tex. Ins. Code Ann. § 804.103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS804.103&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7b98bf75d6ee11ea8f41e1f6f2aa78) | *See* [Tex. Ins. Code Ann. § 804.107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS804.107&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7b98bf76d6ee11ea8f41e1f6f2aa78) | *See* [Federal Ins. Co. v. Ticor Title Ins. Co. of California, 774 S.W.2d 103, 105 (Tex. App. Beaumont 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989121213&pubNum=0000713&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_105&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_105) (Jurisdiction must appear on the face of the record and plaintiff has burden of making sufficient jurisdictional allegations; it was fatal to the case that Ticor’s petition did not allege the factual basis for service upon the Texas insurance commissioner). |
| [10](#co_fnRef_I7b98e680d6ee11ea8f41e1f6f2aa78) | *See* [Conn. Gen. Stat. § 38a-424](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-424&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code §§ 41-211](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-211&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-2713](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2713&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Ann. Stat. § 381.042](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.042&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-101.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-101.01&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.090&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a21&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-4&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. §§ 59, 910-46; [Tenn. Code Ann. § 56-35-122](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-122&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.003](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.003&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I7b98e681d6ee11ea8f41e1f6f2aa78) | *See* [Conn. Gen. Stat. § 38a-424](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-424&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-333](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-333&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I7b98e682d6ee11ea8f41e1f6f2aa78) | *See, e.g.,* [Nev. Rev. Stat. § 692A.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.100&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency shall provide by regulation for the licensing of title agents, agencies, and title insurers); [Nev. Rev. Stat. § 692A.1045](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.1045&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency shall establish by regulation the fees to be paid by title agents and title insurers for the supervision and examination of agents and insurers by the agency); [N.J. Rev. Stat. § 17:46B-49](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-49&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency shall promulgate rules and statistical plans for rate regulation); [N.M. Stat. Ann. § 59A-30-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-4&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency shall promulgate rules and regulations requiring uniform policy forms and rates); § 59A-30-6 (agency must promulgate premium rates other than for reinsurance); 40 Pa. Cons. Stat. § 910-46 (agency shall promulgate rates and statistical plans for rating systems); [Tex. Ins. Code Ann. §§ 2703.101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.101&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2703.151](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.151&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency shall promulgate policy forms for residential real estate transactions and premium rates, respectively). |
| [13](#co_fnRef_I7b98e683d6ee11ea8f41e1f6f2aa78) | *See, e.g.,* [N.J. Rev. Stat. § 17:46B-40](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-40&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency may regulate unlawful rebates); [N.M. Stat. Ann. § 59A-30-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-4&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency may regulate underwriting standards and practices); [Tex. Ins. Code Ann. § 2551.003](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.003&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency may regulate underwriting standards); [Wyo. Stat. § 26-23-325](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-325&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency may promulgate rules or regulations setting forth guidelines for evaluation of rates). |
| [14](#co_fnRef_I7b990d90d6ee11ea8f41e1f6f2aa78) | Roberts, et al., Public Regulation of Title Insurance Companies and Abstracters 50 (1961). *See* [Idaho Code §§ 41-211](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-211&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [67-5220](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS67-5220&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [67-5221](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS67-5221&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-122](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-122&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2703.201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.201&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-223](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-223&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I7b990d91d6ee11ea8f41e1f6f2aa78) | Roberts, et al., Public Regulation of Title Insurance Companies and Abstracters 51 (1961). |
| [16](#co_fnRef_I7b990d92d6ee11ea8f41e1f6f2aa78) | Roberts, et al., Public Regulation of Title Insurance Companies and Abstracters 51 (1961). *See* [Mo. Ann. Stat. §§ 381.042](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.042&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [536.021](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST536.021&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-122](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-122&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I7b990d93d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.120&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1588](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1588&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12414.21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.21&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Cal. Code Regs. ch. 5, Art. 14, § 2556.2 (commissioner may, as often as is reasonable and necessary examine title insurers; the examination may include a review of rates, charges, fees, rating plans, rating systems, underwriting rules or policy forms adopted and used, loss or expense experience and data, statistics, or information collected or used by insurer in determining or establishing rates, charges, fees, rating plans, rating systems, underwriting rules, or policy forms which the insurer has adopted and uses); [Conn. Gen. Stat. §§ 38a-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-14&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [38a-401](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-401&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 155/12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f12&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code § 27-7-3-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-13&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-3&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.122](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.122&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-58](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-58&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-27-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-27-10&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3901.07](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3901.07&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 59; [Va. Code Ann. §§ 38.2-200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-200&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [38.2-4602](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4602&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. § 48.03.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.03.010&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I7b9a1f00d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.330](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.330&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (if agency director has reason to believe that a title insurance limited producer has given an unlawful rebate or inducement, the director shall immediately examine the producer); [Ariz. Rev. Stat. Ann. § 20-1588](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1588&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency director must examine a title insurer or agent when the director has reason to believe that the insurer or agent has violated any title insurance law); [Cal. Ins. Code § 12407](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12407&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency has duty to examine underwritten title company or controlled insurance company if there is reason to believe the company has given an unlawful rebate or inducement); [Idaho Code § 41-216](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-216&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency must provide an annual report of all insurers that includes their financial statements, audited by the director); [215 Ill. Comp. Stat. Ann. § 155/12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f12&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency has the power, authority, and duty to visit and examine title insurance companies annually); [Nev. Rev. Stat. § 692A.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.100&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency shall annually examine the affairs, transactions, agreements, assets, records, and accounts of a title agent or title insurer); [N.J. Stat. Ann. § 17:46B-36](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-36&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (if commissioner has reason to believe title insurance agent has violated laws, shall examine the agents’ books); [Ohio Rev. Code Ann. § 3935.11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.11&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency must examine rating bureaus at least once every five years); 40 Pa. Cons. Stat. § 910-45 (agency must examine rating organizations at least once every five years). [Tex. Ins. Code Ann. art. 9.22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINART9.22&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) requiring the agency to biennially examine title insurance companies was repealed and replaced by [Tex. Ins. Code Ann. § 2551.152](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.152&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) requiring that title insurance companies annually file a verified statement of business affairs. |
| [19](#co_fnRef_I7b9a1f01d6ee11ea8f41e1f6f2aa78) | Roberts, et al., Public Regulation of Title Insurance Companies and Abstracters, 56 (1961). |
| [20](#co_fnRef_I7b9a1f02d6ee11ea8f41e1f6f2aa78) | Roberts, et al., Public Regulation of Title Insurance Companies and Abstracters 52 (1961). |
| [21](#co_fnRef_I7b9a4610d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. §§ 21.66.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.010&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.66.020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.020&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-213](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-213&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code §§ 12350](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12350&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [12352](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12352&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-3-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-3-201&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 513](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S513&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-108&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (1993); [Idaho Code §§ 41-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-316&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-316A](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-316A&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 155/4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f4&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code Ann. §§ 27-7-3-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-7&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [27-7-3-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-9&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.3-140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-140&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Ann. Stat. § 381.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.051&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) was repealed; [Nev. Rev. Stat. § 680A.140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST680A.140&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-7&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 613](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S613&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-6-36](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-6-36&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-112](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-112&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [22](#co_fnRef_I7b9a6d21d6ee11ea8f41e1f6f2aa78) | [215 Ill. Comp. Stat Ann. §§ 155/5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f5&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [155/21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f21&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [Tex. Ins. Code Ann. § 82.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS82.051&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [23](#co_fnRef_I7b9a6d22d6ee11ea8f41e1f6f2aa78) | *See* [Tex. Ins. Code Ann. §§ 21A.001 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS21A.001&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [24](#co_fnRef_I7b9a6d23d6ee11ea8f41e1f6f2aa78) | [Tex. Ins. Code Ann. art. 9.29](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINART9.29&originatingDoc=If4f4eb226fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:3. Statutory definitions of title insurance

Title insurance is insurance, according to both statutory and judicial definitions.[1](#co_footnote_I7bb56f30d6ee11ea8f41e1f6f2a) States’ statutory definitions of title insurance fit generally within the following groups.

A large group of states define title insurance broadly.[2](#co_footnote_I7bb56f31d6ee11ea8f41e1f6f2a) Some of these definitions begin very generally: “Title insurance is insurance. …” or “Title insurance means insurance. …” To complete the definition of title insurance, then, one also must refer to the state’s statutory definition of “insurance.” Often, the statutes defining “insurance” also do so in broad terms, e.g., “a contract,” or “an agreement.”

Numerous states include within their definitions of “title insurance” not only “insuring,” but also “guaranteeing” or “indemnifying” owners of real estate or of encumbrances against loss.[3](#co_footnote_I7bb63280d6ee11ea8f41e1f6f2a) Illinois, Nebraska, Nevada, and Texas add to that definition “any business equivalent thereto” or any business “designed to evade the provisions of this Act.”[4](#co_footnote_I7bb71ce0d6ee11ea8f41e1f6f2a)

Some of these states, in addition to defining title insurance as “insuring,” “guaranteeing,” or “indemnifying,” include “certifying to the correctness of searches” as an element of the definition.[5](#co_footnote_I7bb71ce1d6ee11ea8f41e1f6f2a) Other states add to that definition “any business equivalent thereto,” or “any activity designed to evade the provisions of this Act.”[6](#co_footnote_I7bb743f0d6ee11ea8f41e1f6f2a) Within this latter group, Hawaii and Montana also include within their definition “abstracting, searching, or examining titles.”[7](#co_footnote_I7bb743f1d6ee11ea8f41e1f6f2a)

Some states’ statutory definitions appear to contemplate the actual issuance of a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), thus presumably leaving title certificates, reports, or searches out of the definition.[8](#co_footnote_I7bb76b00d6ee11ea8f41e1f6f2a)

Seven states and the District of Columbia do not specifically define “title insurance.”[9](#co_footnote_I7bb79210d6ee11ea8f41e1f6f2a)

States’ statutory definitions of title insurance may become important in at least three contexts. One circumstance in which a court may consider a state’s statutory definition of title insurance is to determine when the title insurer’s obligation to pay the insured has accrued. In states where the statutory definition of title insurance uses phrases such as “guaranteeing or warranting the status of title”[10](#co_footnote_I7bb79211d6ee11ea8f41e1f6f2a) or “guaranteeing the correctness of searches for all instruments affecting title to real property,”[11](#co_footnote_I7bb7b920d6ee11ea8f41e1f6f2a) support is given to those who argue that title insurance is a title guaranty. An issue considered in several cases is whether courts should interpret title insurance as an agreement only to indemnify against loss or as a title guaranty. If a title insurance policy is a title guaranty, then the insurer is obligated to pay immediately upon the insured’s discovery of a title defect, even if the insured has not yet suffered a loss. Most courts and commentators agree, however, that a title insurance policy is an indemnity contract—a guaranty *against loss,* perhaps, but not a *title* guaranty. This means that the title insurer is not obligated to pay until the insured has suffered an actual loss as the result of a discovered title defect. See §§ [1:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a10&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [5:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a3&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [§§ 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) examining cases that consider this issue.

A second situation in which a state’s statutory definition of title insurance may be important is when an insured asserts that the insurer had a duty to carefully search title and disclose a title defect that is of record, even if the particular title defect fits within a standard policy exclusion or exception. Courts’ interpretations of state statutes to find a duty of title insurers to make a reasonable [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) are considered at [§ 18:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a12&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§§ 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

A third context in which a state’s definition of title insurance may be important is when a person or company that is not licensed as a title insurer offers an alternative title assurance product. One example is when, in 1994, Norwest Mortgage, Inc., began to market a plan called Title Option Plus (TOP) as a substitute for lender’s title insurance. Norwest Mortgage, Inc., began marketing TOP to borrowers, home sellers, and real estate agents as a lower cost substitute for title insurance. In fact, Norwest Mortgage, Inc. (NMI) calculated the price for TOP by estimating what the borrower would pay for a lender’s title insurance policy in a transaction of the same size and, then, subtracting 10%.[12](#co_footnote_I7bb7e033d6ee11ea8f41e1f6f2a)

NMI offered to let the borrower provide evidence of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) via a “Title Option Plus” “Title Condition Report,” rather than a traditional lenders’ title insurance policy. If a purchaser elected Title Option Plus instead of title insurance, NMI had a local title company perform a preliminary title search. NMI used a subsidiary title agency, American Land Title, Inc. (ATI), in states where ATI was domiciled. Before the closing of the loan and mortgage transaction, the title company issued to NMI the “Title Condition Report.” If the report showed no title defects of significance to NMI, NMI closed on the loan and mortgage transaction and then assigned the loan and mortgage to investors in the secondary mortgage market.

Reportedly, [**Freddie Mac**](http://practicallawconnect.thomsonreuters.com/Document/I03f4da73eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), [**Fannie Mae**](http://practicallawconnect.thomsonreuters.com/Document/I03f4da71eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), and investors in VA loans agreed to accept “TOP” rather than lenders title insurance on loans purchased from NMI pursuant to the terms of a “Master Agreement” between NMI and the investing entity.[13](#co_footnote_I7bb7e034d6ee11ea8f41e1f6f2a) In the Master Agreement, NMI guaranteed to the investor that the mortgage lien was a first lien and covenanted to defend its first lien status, cure any title defects that are discovered to affect its first lien status, or repurchase the mortgage lien from the investor.[14](#co_footnote_I7bb7e035d6ee11ea8f41e1f6f2a)

In September 1994, the Nebraska Department of Insurance issued to NMI and ATI a Cease and Desist Order, on the grounds that NMI was selling title insurance, according to the state’s statutory definition, without having On May 10, 1995, the Director of the Nebraska Insurance Department issued Findings of Facts and Conclusions of Law which concluded that (a) the TOP program meets the state’s statutory definition of title insurance, (b) Norwest created TOP in order to evade state insurance regulatory laws, (c) NMI’s promotion of TOP constitutes an unauthorized business of insurance in violation of state law, and (d) TOP is marketed in a misleading fashion and also constitutes an unfair trade practice in the solicitation of insurance in violation of state law.[15](#co_footnote_I7bb80740d6ee11ea8f41e1f6f2a) As a result, the Insurance Department ordered NMI, Norwest Corporation, and ATI to cease and desist from further solicitation efforts of the TOP program in the State of Nebraska.[16](#co_footnote_I7bb80741d6ee11ea8f41e1f6f2a) The Nebraska Supreme Court ultimately affirmed the Insurance Department’s order. The Nebraska Court held that TOP fit within the state’s statutory definition of “insurance or the substantive equivalent thereof” and, therefore, NMI’s marketing of TOP was subject to state insurance laws and regulations.[17](#co_footnote_I7bb80742d6ee11ea8f41e1f6f2a)

Conversely, the Virginia Supreme Court in 1997 held that insurance was defined as a product that “shifts the risk” from one party to another and concluded there was no risk shifting with TOP.[18](#co_footnote_I7bb80743d6ee11ea8f41e1f6f2a) The Virginia court concluded that TOP is simply self-insurance, reasoning that when NMI takes a mortgage NMI incurs the risk of the mortgage lien’s lack of priority or invalidity and NMI simply retains that risk when NMI contracts in its “master agreement” to defend or buy back any defective mortgage loan from the secondary mortgage market investor who purchased it.[19](#co_footnote_I7bb8a380d6ee11ea8f41e1f6f2a)

However, the South Dakota Supreme Court subsequently explained that the Virginia Supreme Court overlooked the fact that, when NMI sells its mortgage loans to a [**secondary market**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3a51ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) investor, the latter is the party that then normally would bear the risk of a mortgage lien’s unenforceability or lack of priority.[20](#co_footnote_I7bb8a381d6ee11ea8f41e1f6f2a) That is why secondary market investors generally only purchase mortgages covered by title insurance and why standard lenders policies automatically include the secondary mortgage market purchaser in the policy’s definition of “the insured.”[21](#co_footnote_I7bb8ca90d6ee11ea8f41e1f6f2a) NMI’s “master agreement” with its secondary mortgage market investor shifted that risk back to NMI by covenanting to protect the investor’s interest in the event of a title claim, including retaining counsel and paying for all defense costs or repurchasing the loan.[22](#co_footnote_I7bb8ca93d6ee11ea8f41e1f6f2a) The South Dakota Supreme Court, therefore, agreed with the Nebraska Supreme Court, found there was both a shifting of title risks and a promise to indemnify, and held that TOP was title insurance subject to regulation by the state’s insurance division.[23](#co_footnote_I7bb8ca94d6ee11ea8f41e1f6f2a)

In September of 1994, the Illinois Department of Financial Institutions also sent NMI a letter advising that the Department considered TOP to fit within Illinois’s statutory definition of title insurance.[24](#co_footnote_I7bb8ca95d6ee11ea8f41e1f6f2a) Furthermore, by December of 1998, insurance regulatory agencies in the following states had either written letters to Norwest or begun administrative or judicial proceedings: Colorado, Connecticut, Idaho, Iowa, Kansas, Missouri, North Carolina, Oregon, Pennsylvania, Utah, Texas, Tennessee, Washington, and New York.

A lender who simply self-insures its mortgage liens as first liens is not selling insurance so long as the mortgage loan is in that lender’s hands. But if that lender assigns a mortgage and extends to that assignee a promise of indemnification if the lien’s priority is challenged for any reason, then the lender seems to be offering the assignee title insurance under most states’ statutory definitions.

A second example of an alternative title assurance product being banned under states’ statutory definitions of title insurance involved mortgage impairment insurance sold by Radian Guaranty, Inc. (“Radian”). In 2001, the [**American Land Title Association (ALTA)**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) filed suit alleging that Radian was engaging in the sale of title insurance without complying with state regulations imposed on title insurers.[25](#co_footnote_I7bb8ca96d6ee11ea8f41e1f6f2a) Radian’s Web site advertised its product “Radian Lien Protection” as “a title insurance alternative for less than half the cost” “designed to simplify and shorten closing time.”[26](#co_footnote_I7bb8f1a0d6ee11ea8f41e1f6f2a) Radian Lien Protection combined standard mortgage impairment insurance over a wide range of losses arising from a borrower’s default with coverage for losses due to undisclosed prior liens.[27](#co_footnote_I7bb8f1a1d6ee11ea8f41e1f6f2a) Radian offered it for pools of refinanced mortgages and for home equity and second mortgage loans.[28](#co_footnote_I7bb8f1a2d6ee11ea8f41e1f6f2a)

Before registering each mortgage lien for coverage under a master policy, Radian obtained a Mortgage Lien Report which itemized credit-related matters affecting the borrower and public records of tax liens, judgments, and other title matters affecting the property.[29](#co_footnote_I7bb8f1a3d6ee11ea8f41e1f6f2a) Radian gave the lender an Ownership and Verification Report on each loan.[30](#co_footnote_I7bb8f1a4d6ee11ea8f41e1f6f2a) Upon a borrower’s default, Radian agreed to pay any loss realized upon the sale of the property.[31](#co_footnote_I7bb8f1a5d6ee11ea8f41e1f6f2a)

In March 2005, the California Court of Appeal for the First District held that Radian was properly ordered to stop selling its lien protection policy because its coverage for loss from undisclosed liens was title insurance, and insuring both a mortgage guaranty risk and a title risk violated the [**monoline**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1985f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) insurance regulation the state imposed on title insurers.[32](#co_footnote_I7bb8f1a6d6ee11ea8f41e1f6f2a) State insurance regulators in Florida, Pennsylvania, Illinois, and other states also issued cease-and-desist orders or letters to Radian objecting that its mortgage impairment insurance may violate state insurance laws.[33](#co_footnote_I7bb8f1a7d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7bb56f30d6ee11ea8f41e1f6f2aa78) | *See* [U.S. v. Home Title Ins. Co., 1932-1 C.B. 362, 285 U.S. 191, 52 S. Ct. 319, 76 L. Ed. 695, 3 U.S. Tax Cas. (CCH) P 906, 10 A.F.T.R. (P-H) P 1592 (1932)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1932123598&pubNum=0000708&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Commander Leasing Co. v. Transamerica Title Ins. Co., 477 F.2d 77, 1973-1 Trade Cas. (CCH) ¶ 74443 (10th Cir. 1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973109589&pubNum=0000350&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7bb56f31d6ee11ea8f41e1f6f2aa78) | Eighteen states fall within this category, including:  [Ala. Code § 27-5-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-5-10&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance: Insurance of owners of property, or others having an interest therein or liens or encumbrances thereon against loss by encumbrance or defective titles, or invalidity or adverse claim to title. [Ala. Code § 27-1-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-1-2&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Insurance: A contract whereby one undertakes to indemnify another or pay or provide a specified amount or benefit upon determinable contingencies.  [Ark. Code Ann. § 23-62-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-62-108&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance: Insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title. [Ark. Code Ann. § 23-60-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-60-102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Insurance: Any agreement, contract, or other transaction whereby one party, the “insurer,” dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such an event.  [Del. Code Ann. tit. 18, § 908](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S908&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Title insurance is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance or defective titles or invalidity or adverse claim to title. [Del. Code Ann. tit. 18, § 102(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—“Insurance” means a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, called “risks,” or to pay or grant a specified amount of determinable benefit in connection with ascertainable risk contingencies or to act as surety.  [Fla. Stat. Ann. § 624.608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.608&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” is insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title. [Fla. Stat. Ann. § 624.02](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.02&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” is a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.  [Ga. Code Ann. § 33-7-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-7-8&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Title insurance is insurance of owners of real property or others having an interest in such real property, or liens or encumbrances on such real property, against loss by encumbrance, defective titles, invalidity, adverse claim to title, or unmarketability of title by reason of encumbrance or defects not excepted in the insurance contract, which contract shall be written only upon evidence or opinion of title obtained and preserved by the insurer. [Ga. Code Ann. § 33-1-2(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-1-2&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” means a contract which is an integral part of a plan for distributing individual losses whereby one undertakes to indemnify another or to pay a specified amount or benefits upon determinable contingencies.  [Ind. Code Ann. § 27-7-3-2(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-2&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): the term “title insurance” means a contract of insurance against loss or damage on account of encumbrances upon or defects in the title to real estate. [Ind. Code Ann. § 27-1-2-3(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-1-2-3&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” means a contract of insurance or an agreement by which one party, for a consideration, promises to pay money or its equivalent or to do an act valuable to the insured upon destruction, loss, or injury of something in which the other party has a pecuniary interest, or in consideration of a price paid, adequate to the risk, becomes security to the other against loss by certain specified risks; to grant indemnity or security against loss for a consideration.  [Iowa Code Ann. § 515.48(10)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS515.48&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Prohibitory language refers to “… title insurance or insurance against loss or damage by reason of defective title, encumbrances or otherwise,” without providing a precise definition of “insurance.”  [Ky. Rev. Stat. Ann. § 304.5-090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.5-090&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective title, or invalidity, or adverse claim to title. [Ky. Rev. Stat. Ann. § 304.1-030](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.1-030&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” is a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils called “risks,” or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety.  [La. Rev. Stat. Ann. § 22:6(9)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a6&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance: Insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or adverse claim to title, and services connected therewith. [La. Rev. Stat. Ann. § 22:5(9)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a5&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.  [Me. Rev. Stat. Ann. tit. 24-A, § 709](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS709&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Title insurance is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity or adverse claim to title. [Me. Rev. Stat. Ann. tit. 24-A, § 3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS3&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” is a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount of determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety.  Md. Ins. Code Ann., § 1-101(qq): Title insurance is insurance of owners of property or other persons that have an interest in the property against loss by encumbrance, defective title, invalidity of title, or adverse claim to title. Md. Insurance Code Ann. § 1-101(s): “Insurance” is a contract to indemnify or to pay or provide a specified or determinable amount or benefit upon determinable contingencies.  [Okla. Stat. tit. 36 § 709](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S709&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title. [Okla. Stat. tit. 36 § 102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” is a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies.  [Or. Rev. Stat. § 731.190](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.190&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insurance of owners of property or others having an interest therein or liens thereon, against loss by encumbrance, defective titles, invalidity, or adverse claim to title. [Or. Rev. Stat. § 731.102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” means a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies.  [S.C. Code Ann. § 38-1-20(39)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-1-20&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insurance of the owners of real property and other persons lawfully interested therein against loss by reason of defective titles and undisclosed liens and encumbrances affecting the property. [S.C. Code Ann. § 38-1-20(19)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-1-20&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” means a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.  [S.D. Codified Laws Ann. § 58-9-33](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-9-33&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” is the insurance of owners of property or others having an interest therein or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title. [S.D. Codified Laws Ann. § 58-1-2(8)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-1-2&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” referred to as a contract whereby one undertakes to indemnify another or to pay or provide a specific or determinable amount or benefit upon determinable contingencies.  [Va. Code Ann. § 38.2-123](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-123&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insurance against loss by reason of liens and encumbrances upon property, defects in the title to property, and other matters affecting the title to property or the right to the use and enjoyment of property. “Title insurance” includes the insurance of the condition of the title to property and the status of any lien on property. No definition of “insurance.”  [Wash. Rev. Code Ann. § 48.11.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.11.100&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” is insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or adverse claim to title, and services connected therewith. [Wash. Rev. Code Ann. § 48.01.040](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.01.040&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.  [W. Va. Code § 33-1-10(f)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-1-10&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))4—Title Insurance: Insurance of owners of property, or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, defective title, invalidity, or adverse claim to title. [W. Va. Code § 33-1-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-1-1&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Insurance is a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies.  [Wyo. Stat. § 26-5-109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-5-109&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance: Insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss of encumbrance, defective titles, invalidity or adverse claim to title. [Wyo. Stat. § 26-1-102(xv)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-1-102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” means a contract in which one undertakes to indemnify another against loss arising from determinable hazards of fortuitous occurrences or to pay or allow a specified amount or determinable benefit in connection with ascertainable risk contingencies. |
| [3](#co_fnRef_I7bb63280d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.480(2)—(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.480&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) “Business of Title Insurance”: the making or proposing to make as insurer, guarantor, or surety, a contract or policy of title insurance; or (B) the transacting or proposing to transact, any phase of title insurance including solicitation, negotiation preliminary to execution, execution of a title insurance contract, and insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance. [Alaska Stat. § 21.66.480(6)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.480&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance: Insuring, guaranteeing, or indemnifying owners of real or personal property or the holders of liens or encumbrances on it or others interested therein against loss or damage suffered by reason of (A) liens, encumbrances upon, defects in, or the unmarketability of the title to the property; or (B) the invalidity or unenforceability of liens or encumbrances on the property.  [Colo. Rev. Stat. § 10-11-102(8)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property.  N.H. Rev. Stat. Ann. § 416-A:2.I: “Title insurance” means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss of damage suffered by reason of liens, encumbrances upon, defects in, or the unmarketability of the title to said property.  N.M. Stat. Ann. § 59A-30-3G: “Title insurance policy” or “policy” means a contract indemnifying against loss or damage arising from any of the following which exist on or before the effective date of the policy:   1. (1) defects in the insured title 2. (2) liens or encumbrances on the insured title 3. (3) unmarketability of the insured title 4. (4) invalidity or unenforceability of liens or encumbrances on the property which is the subject of the policy.   “Title insurance policy” does not include an abstract. [N.M. Stat. Ann. § 59A-1-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-1-5&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” is a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specific amount or determinable benefit in connection with ascertainable risk contingencies, or to act as surety.  [Utah Code Ann. § 31A-1-301(156)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-1-301&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means the insuring, guaranteeing, or indemnifying of owners of real property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.  [Vt. Stat. Ann. tit. 8, § 3301(9)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000883&cite=VT8S3301&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance: The certification or guarantee of title or ownership, or insurance of owners of property or others having an interest therein or liens or encumbrances thereon, against loss by encumbrance or defective titles, or invalidity, or adverse claim to title. |
| [4](#co_fnRef_I7bb71ce0d6ee11ea8f41e1f6f2aa78) | [215 Ill. Comp. Stat. § 155/3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f3&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insuring, guaranteeing, warranting, or indemnifying owners of real or personal property or the holders of liens or encumbrances thereon or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in, or the unmarketability of the title to the property; the invalidity or unenforceability of any liens or encumbrances thereon; or doing any business in substance equivalent to any of the foregoing.  [Neb. Rev. Stat. § 44-1981(18)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1981&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Title insurance business means: (b)(2) guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases and for all liens or charges affecting the same; (c) guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property; (d) guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction; or (e) transacting or proposing to transact any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of the title Insurers Act.  [Nev. Rev. Stat. § 681A.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST681A.080&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insuring, guaranteeing, or indemnifying owners of property or holders of liens, encumbrances, or security interests on the property, and others interested therein, against loss or damage suffered by reason of:   1. 1. Liens, encumbrances, security interests and defects in, or the unmarketability of, the title to the property; or 2. 2. Invalidity or unenforceability of liens or security interests on the property, and any other activity substantially equivalent to these activities.   [Tex. Ins. Code Ann. § 2501.003(11)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.003&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means (A) insurance that insures, guarantees, or indemnifies an owner of real property, or another interested in the real property, against loss or damage resulting from: (i) a lien or encumbrance on or defect in the title to the real property; or (ii) the invalidity or impairment of a lien on the real property; or (B) any business that is substantially equivalent to the insurance described by Paragraph (A) and is conducted in a manner designed to evade the provisions of this title. |
| [5](#co_fnRef_I7bb71ce1d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12340.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.1&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insuring, guaranteeing, or indemnifying owners of real or personal property or the holders of liens or encumbrances thereon or others interested therein against loss or damage suffered by reason of:   1. (a) liens or encumbrances on, or defects in the title of said property; 2. (b) invalidity or unenforceability of any liens or encumbrances thereon; or 3. (c) incorrectness of searches relating to the title to real or personal property.   *See e.g.*, [Beaudin v. Stewart Title Guaranty Company, 2019 WL 422208, \*3 (Cal. App. 1st Dist. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2047463309&pubNum=0000999&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), unpublished/noncitable, (Feb. 4, 2019) and review denied, (May 1, 2019); [Siegel v. Fidelity Nat. Title Ins. Co., 46 Cal. App. 4th 1181, 1191, 54 Cal. Rptr. 2d 84 (2d Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996143274&pubNum=0003484&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Idaho Code § 41-508(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-508&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” is the certification or guarantee of title or ownership, or insurance of owners of property or others having an interest therein or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title. This definition shall not be deemed to apply as to the business of preparing and issuing abstracts of, but not certifying, guaranteeing, or insuring, title to or ownership of property or certifying to the validity of documents relative to such title. (2) A title insurer may also insure: (a) the identity, due execution, and validity of any note or bond secured by mortgage or deed of trust; and (b) the identity, due execution, validity, and recording of any such mortgage or deed of trust.  [Kan. Stat. Ann. § 40-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-201&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance company” shall, unless otherwise provided, apply to all corporations, companies, associations, societies, persons, or partnerships writing contracts of insurance or suretyship upon any type of risk or loss. [Kan. Stat. Ann. § 40-1102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-1102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): among others, authorizes insurance companies (e) to insure titles to property against loss by reason of defective titles or encumbrances; (f) to insure the correctness of searches for all instruments, liens, and charges affecting property.  [N.Y. Ins. Law § 6401(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6401&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance policy” means any policy or contract insuring or guaranteeing the owners of real property and chattels real and other persons interested therein, or having liens thereon, against loss by reason of encumbrances thereon and defective titles. [N.Y. Ins. Law § 6403(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6403&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance Business: (1) to make and to guarantee the correctness of searches for all instruments affecting titles to real property and chattels real, and for all liens or charges affecting the same; (2) to issue title insurance policies.  [Tex. Ins. Code Ann. § 2501.005(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.005&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): A person engages in the business of title insurance if the person, among other things: (3) makes a guaranty or warranty of a title search or a title examination, or any component of a title search or title examination, if the person is not the person who performs the search or examination. |
| [6](#co_fnRef_I7bb743f0d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. Ann. § 20-1562(8)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1562&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title to such property, guaranteeing, warranting, or otherwise insuring the correctness of searches relating to the title to real property, or doing any business in substance equivalent to any of the foregoing.  [Conn. Gen. Stat. § 38a-402(14)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-402&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance business” means, among other things, (ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches; (iii) execution of title insurance policies; (iv) effecting contracts of reinsurance or (v) doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of sections 38a-400 to 38a-425, inclusive.  [N.J. Stat. Ann. § 17:46B-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-1&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of title to said property, guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any business in substance equivalent to any of the foregoing in a manner to evade the provisions of this act.  [Ohio Rev. Code Ann. § 3953.01(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.01&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance” means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defect in, or the unmarketability of, the title to such property, guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any business in substance equivalent to any of the foregoing.  40 Pa. Cons. Stat. § 910-1: “Title insurance” means insuring, guaranteeing, or indemnifying against loss or damage suffered by owners of real property or by others interested therein by reason of liens, encumbrances upon, defects in or unmarketability of the title to said real property; guaranteeing, warranting, or otherwise insuring the correctness of searches relating to title to real property; and doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this article. |
| [7](#co_fnRef_I7bb743f1d6ee11ea8f41e1f6f2aa78) | [Haw. Rev. Stat. § 431:20-102(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Title insurance business or business of title insurance means: guaranteeing, warranting, or otherwise insuring the correctness of title searches; handling of escrows, settlements, or closings; execution of title insurance policies; effecting contracts of reinsurance; abstracting, searching, or examining titles; or doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this article.  [Mont. Code Ann. § 33-25-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-105&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Title insurance business” means, among other things, (b) (vi) abstracting, searching, or examining titles; (c) transacting, as a title insurer or insurance producer, matters subsequent to the issuance of a title insurance policy and arising out of the policy; or (d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections (11)(a) through (11)(c) in a manner designed to evade the provisions of this title. |
| [8](#co_fnRef_I7bb76b00d6ee11ea8f41e1f6f2aa78) | [Conn. Gen. Stat. Ann. § 38a-402(13) to (15)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-402&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Definitions of “Title agent,” “Title insurance business,” and “Title insurance policy” contemplate activities incidental to issuance of an actual title insurance policy.  [Haw. Rev. Stat. § 431:20-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Definition contemplates activities incidental to issuance of an actual title insurance policy.  [215 Ill. Comp. Stat. Ann. § 155/3(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f3&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Definition contemplates activities incidental to issuance of an actual title insurance policy by a title insurer.  [Mich. Comp. Laws Ann. § 500.7301(a), (c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7301&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): contemplates activities incidental to issuance of an actual title insurance policy.  [Tenn. Code Ann. § 56-35-102(11)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—Title Insurance Business: The insuring or guaranteeing of titles to real property, or interests therein, or the validity, accuracy, or sufficiency of liens or encumbrances thereon; provided that nothing contained in this chapter shall make it necessary for any corporation making abstracts of title, certifying to the correctness thereof, issuing certificates as to the record title to real estate, or furnishing information regarding title thereto, to comply with this chapter, when such information does not take the form of, and is not, in fact, an insurance of the title to real estate, or interest therein, or of such liens or other encumbrances. |
| [9](#co_fnRef_I7bb79210d6ee11ea8f41e1f6f2aa78) | District of Columbia: no specific definition of “title insurance” or “insurance.”  [Mass. Gen. Laws Ann. ch. 175, § 2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S2&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Contract of insurance” is an agreement by which one party for a consideration promises to pay money or its equivalent, to do an act valuable to the insured upon destruction, loss, or injury of something in which the other party has an interest. [Mass. Gen. Laws Ann. ch. 175, § 47(11)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S47&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): authorizes incorporation of companies [t]o examine titles of real and personal property, furnish information relative thereto, and insure owners and others interested therein against loss by reason of encumbrances, defective title, or the insufficiency of any mortgage held or sold by the insurer as security for the amount secured by such mortgage, or against any loss in connection with and such mortgage or interest therein.  [Minn. Stat. § 60A.02(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS60A.02&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Insurance” is any agreement whereby one party, for a consideration, undertakes to indemnify another to a specific amount against loss or damage from specified causes, or to do some act of value to the assured in case of such loss or damage.  [Miss. Code Ann. § 83-5-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-5-5&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction, loss, or injury of something in which the assured or other party has an interest, as an indemnity therefor.  [N.C. Gen. Stat. § 58-1-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-1-10&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): A contract of insurance is an agreement by which the insurer is bound to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity or reimbursement for the destruction, loss, or injury of something in which the other party has an interest.  [N.D. Cent. Code § 26.1-29-01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-29-01&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): An insurance contract is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.  Rhode Island: No definitions.  Wis.: Mention is made of title insurance in the Wisconsin statutes, but no precise definition was found. |
| [10](#co_fnRef_I7bb79211d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.480](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.480&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1562](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1562&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12340.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.1&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-102&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f3&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Stat. Ann. § 500.7301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7301&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-201&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 681A.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST681A.080&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a2&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); N.J. Stat. Ann. § 17:46 B-1; [Ohio Rev. Code Ann. § 3953.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.01&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-1(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-1&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2501.003](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.003&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-1-301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-1-301&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Vt. Stat. Ann. tit. 8, § 3301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000883&cite=VT8S3301&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I7bb7b920d6ee11ea8f41e1f6f2aa78) | [Kan. Stat. Ann. § 40-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-201&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6403(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6403&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I7bb7e033d6ee11ea8f41e1f6f2aa78) | *See* Defendant’s Reply Brief in Opposition to Motion for Temporary Restraining Order, filed in Norwest Corp. v. State of Nebraska, Dep’t of Insurance, Docket 519 Page 8, at 3 (Dist. Ct., Lancaster County, NE 1994). |
| [13](#co_fnRef_I7bb7e034d6ee11ea8f41e1f6f2aa78) | Norwest Corp. v. State of Nebraska, Dep’t of Insurance, Docket 519 Page 8, at 3 (Dist. Ct., Lancaster County, NE 1994). |
| [14](#co_fnRef_I7bb7e035d6ee11ea8f41e1f6f2aa78) | Norwest Corp. v. State of Nebraska, Dep’t of Insurance, Docket 519 Page 8, at 3 (Dist. Ct., Lancaster County, NE 1994). |
| [15](#co_fnRef_I7bb80740d6ee11ea8f41e1f6f2aa78) | Findings of Fact and Conclusions of Law and Order, filed in Matter of Norwest Corp., Cause No. I-37, Before the Nebraska Dep’t of Ins., pp. 8–10 (May 10, 1995). |
| [16](#co_fnRef_I7bb80741d6ee11ea8f41e1f6f2aa78) | Nebraska Dep’t of Ins., p. 10 (May 10, 1995). |
| [17](#co_fnRef_I7bb80742d6ee11ea8f41e1f6f2aa78) | [Norwest Corp. v. State, Dept. of Ins., 253 Neb. 574, 571 N.W.2d 628 (1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997248316&pubNum=0000595&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I7bb80743d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. Norwest Corp., 254 Va. 388, 493 S.E.2d 114 (1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997221884&pubNum=0000711&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I7bb8a380d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. Norwest Corp., 254 Va. 388, 493 S.E.2d 114 (1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997221884&pubNum=0000711&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I7bb8a381d6ee11ea8f41e1f6f2aa78) | [State, Div. of Ins. v. Norwest Corp., 1998 SD 61, 581 N.W.2d 158, 161–163 (S.D. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998133338&pubNum=0000595&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_161&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_161):  We are not bound by the Virginia decision and do not find it persuasive for a number of reasons. First, unlike South Dakota, Virginia does not have a statutory definition of “insurance.” Also, that court did not review this issue under a de novo standard. Finally, the Virginia decision was a sharply divided 4-3 decision, and we are more persuaded by the dissent. Although the Nebraska Supreme Court does not define insurance in terms of shifting the risk, we find its statements on this issue persuasive. That court held that “at the time NMI sells a mortgage to Freddie Mac, NMI no longer has an insurable interest after the sale, and that the owner of the mortgage, Freddie Mac, bears the risk.” [Norwest Corp., 571 N.W.2d at 637](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997248316&pubNum=0000595&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_637&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_637). We find this opinion more persuasive than that of the Virginia Supreme Court in [Lawyers Title, 493 S.E.2d at 116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997221884&pubNum=0000711&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_711_116&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_116), holding:  When Norwest Mortgage makes a loan, it is a mortgage loan secured by a lien interest in the realty. At that point in time, Norwest Mortgage incurs a title risk that the loan is not properly secured or that its lien is not first in priority. Then Norwest Mortgage sells that mortgage loan into the secondary market. At that point, Norwest Mortgage makes a warranty and representation to the secondary market purchaser that the loan is a first mortgage loan. Were we to agree with the Virginia Court we would be ignoring the fact that, absent the master agreement, Freddie Mac bears the risk. When Freddie Mac purchases a loan it becomes, in essence, the owner of that loan. If there is a claim against the title of the underlying property, Freddie Mac would bear the risk. That is why Freddie Mac requires either title insurance or TOP as a condition to its purchasing a loan. We reject Norwest Parties’ argument that since NMI agrees to be responsible for any defects in title, the risk does not shift because Freddie Mac never receives the risk in the transaction. That ignores the underlying realities of risk absent the other agreements. That is also why Freddie Mac requires Norwest to guarantee NMI. Such an agreement would be unnecessary if NMI always maintained the risk. |
| [21](#co_fnRef_I7bb8ca90d6ee11ea8f41e1f6f2aa78) | *See* §§ [4:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a8&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [4:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a11&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [22](#co_fnRef_I7bb8ca93d6ee11ea8f41e1f6f2aa78) | [State, Div. of Ins. v. Norwest Corp., 1998 SD 61, 581 N.W.2d 158, 160 (S.D. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998133338&pubNum=0000595&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_160&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_160): NMI enters into a “Master Agreement” with Freddie Mac when selling it a loan. This agreement provides for NMI’s contractual undertaking and generally states: (1) that the loan constitutes a valid first lien, and (2) in the event a claim or lawsuit arises involving title issues that could impair Freddie Mac’s first-lien position or the value of the underlying property, NMI will act to protect Freddie Mac’s interest, including retaining counsel and paying for all defense costs or repurchasing the loan. Finally, a “Guarantee Agreement” is entered into between Norwest and Freddie Mac, whereby Norwest guarantees the performance of NMI to Freddie Mac. |
| [23](#co_fnRef_I7bb8ca94d6ee11ea8f41e1f6f2aa78) | [State, Div. of Ins. v. Norwest Corp., 1998 SD 61, 581 N.W.2d 158 (S.D. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998133338&pubNum=0000595&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [24](#co_fnRef_I7bb8ca95d6ee11ea8f41e1f6f2aa78) | Complaint for Declaratory and Other Relief, filed in Norwest Corp. v. Dep’t of Financial Institutions, No. 94C 6065 (D.C. N. D. Ill. Oct. 5, 1994) & Letter from Andrew V. Madonia, State of Illinois Dep’t of Financial Institutions, to Michael G. Fahey, President, ATI Title Company, dated Sept. 23, 1994. |
| [25](#co_fnRef_I7bb8ca96d6ee11ea8f41e1f6f2aa78) | ALTA files lawsuit against Radian, http://www.alta.org (Oct. 13, 2001); Letter to the Editor of “American Banker:” Radian’s Product a Poor Substitute for Title Insurance, From Ann vom Eigen, ALTA Legislative/Regulatory counsel (Nov. 2, 2001) (link to this Letter found at http://www.alta.org, Dec. 1, 2001). *See also* Radian Product May Lead to Suit by Title Group, American Banker, p. 9 (Oct. 26, 2001). |
| [26](#co_fnRef_I7bb8f1a0d6ee11ea8f41e1f6f2aa78) | *See* http://www.radianmi.com/content/products/ecom/prod\_ecom8\_ frame.asp (Dec. 3, 2001). Radian’s Master Policy also provided that if a dispute arose between the insured and insurer, any arbitration proceeding they would be pursuant to Title Insurance Arbitration Rules. |
| [27](#co_fnRef_I7bb8f1a1d6ee11ea8f41e1f6f2aa78) | Order Denying Radian’s Petition for Writ of Administrative Mandamus, Radian Guaranty Inc. v. Garamendi, #503449 at p. 3 (Cal. Sup. Ct. San Francisco County, Jan. 2, 2004). |
| [28](#co_fnRef_I7bb8f1a2d6ee11ea8f41e1f6f2aa78) | Order Denying Radian’s Petition for Writ of Administrative Mandamus, Radian Guaranty Inc. v. Garamendi, #503449 at p. 3 (Cal. Sup. Ct. San Francisco County, Jan. 2, 2004); http://www.radianmi.com/content/products/ecom/prod\_ecom8\_frame.asp. (Dec. 3, 2001). |
| [29](#co_fnRef_I7bb8f1a3d6ee11ea8f41e1f6f2aa78) | *See* http://www.radianmi.com/content/products/ecom/prod\_ecom8\_ frame.asp (Dec. 3, 2001). |
| [30](#co_fnRef_I7bb8f1a4d6ee11ea8f41e1f6f2aa78) | http://www.radianmi.com/content/products/ecom/prod\_ecom8\_frame.asp (Dec. 3, 2001). |
| [31](#co_fnRef_I7bb8f1a5d6ee11ea8f41e1f6f2aa78) | http://www.radianmi.com/content/products/ecom/prod\_ecom8\_frame.asp (Dec. 3, 2001). |
| [32](#co_fnRef_I7bb8f1a6d6ee11ea8f41e1f6f2aa78) | [Radian Guaranty, Inc. v. Garamendi, 127 Cal. App. 4th 1280, 26 Cal. Rptr. 3d 464 (1st Dist. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2006393773&pubNum=0007047&originatingDoc=If4f4eb256fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [33](#co_fnRef_I7bb8f1a7d6ee11ea8f41e1f6f2aa78) | *See* http://www.alta.org/mortgage/mortgage.htm (last visited Feb. 28, 2004); Letter to the Editor of “American Banker”: Radian’s Product a Poor Substitute for Title Insurance, From Ann vom Eigen, ALTA Legislative/Regulatory counsel (Nov. 2, 2001) (link to this letter found at http://www.alta.org, Dec. 1, 2001). |

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2 Title Ins. Law § 18:4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:4. Supervision of title insurance agents

Many states require licensure or certification of title insurance agents.[1](#co_footnote_I7bce9c80d6ee11ea8f41e1f6f2a) In general, a natural person, unincorporated association, or corporation can be a title insurance agent.[2](#co_footnote_I7bcec390d6ee11ea8f41e1f6f2a) Banks and lending institutions, however, in most states are barred from becoming title insurance agents.[3](#co_footnote_I7bcec391d6ee11ea8f41e1f6f2a) Ohio also prohibits escrow companies and real estate companies from becoming title insurance agents.[4](#co_footnote_I7bcec393d6ee11ea8f41e1f6f2a) Another exception to the general rule is that in Connecticut a statute mandates that only attorneys may be title insurance agents.[5](#co_footnote_I7bcec394d6ee11ea8f41e1f6f2a) These restrictions are efforts to discourage controlled business situations and the conflicts of interest and unnecessary expenses for consumers that they encourage. Concerns about such conflicts and their consequences are considered in [§§ 3:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a1&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [§§ 13:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a1&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [§ 18:42](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a42&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

A person or entity licensed as a title insurance agent may solicit title insurance, collect premiums, and issue policies.[6](#co_footnote_I7bceeaa3d6ee11ea8f41e1f6f2a) Several states authorize or require the state regulatory agency to supervise the activities of title insurance agents.[7](#co_footnote_I7bceeaa4d6ee11ea8f41e1f6f2a) Some states require minimum continuing education in title insurance and escrow management.[8](#co_footnote_I7bceeaa5d6ee11ea8f41e1f6f2a) Some states require title insurance agents to post a bond.[9](#co_footnote_I7bcf11b0d6ee11ea8f41e1f6f2a) As mentioned in [§ 18:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a2&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), many states require the regulatory agency to procure periodic examinations or audits of title insurance agents.[10](#co_footnote_I7bcf11b2d6ee11ea8f41e1f6f2a) The title insurance agent may have the right to appear at a hearing and to request modifications before the report is made available to the public.[11](#co_footnote_I7bcf11b3d6ee11ea8f41e1f6f2a)

In many states, the director of the regulatory agency may deny, suspend, or revoke a title insurance agent’s license for cause.[12](#co_footnote_I7bd10d80d6ee11ea8f41e1f6f2a) Under the Model Title Insurance Act, denial, suspension, or revocation may be warranted for actions of the agent such as the following: (i) obtaining its license by fraud or misrepresentation; (ii) misappropriating funds; (iii) concealing facts or making misrepresentations to a party in an escrow or closing transaction; (iv) committing any fraudulent, coercive, or dishonest practice; or (v) being convicted of a felony.[13](#co_footnote_I7bd10d81d6ee11ea8f41e1f6f2a)

The Model Title Insurance Act also would require each title insurance underwriter to provide a list of its agents to the state regulatory agency.[14](#co_footnote_I7bd13490d6ee11ea8f41e1f6f2a) Additionally, under the Model Act every title insurance agent would have to give the state regulator proof of its financial responsibility.[15](#co_footnote_I7bd13491d6ee11ea8f41e1f6f2a)

As of 1994, only one state had adopted the Model Title Insurance Act in its entirety.[16](#co_footnote_I7bd13492d6ee11ea8f41e1f6f2a) The Model Act was promulgated by the National Association of Insurance Commissioners (NAIC) in 1982. The NAIC is the trade association of state insurance regulators. The purpose of the NAIC is to assist insurance regulatory officials in improving reliability and financial solidity of insurance institutions, fair and equitable treatment for policyholders and claimants and state regulation of insurance.[17](#co_footnote_I7bd13493d6ee11ea8f41e1f6f2a) In furtherance of these goals, the NAIC sets up committees, task forces, and working groups that study specific issues and promulgate model laws, regulations, and guidelines. A Special Insurance Issues Committee has responsibility for problems relating to miscellaneous lines of insurance, including title insurance. Today, to encourage greater consistency among the states, the NAIC offers accreditation only to states that have both adopted NAIC model acts with language as strict as the models and put in place the personnel, budget, and regulations necessary to enforce the adopted models.[18](#co_footnote_I7bd13494d6ee11ea8f41e1f6f2a)

In 1993, the NAIC appointed a title insurance [**working group**](http://practicallawconnect.thomsonreuters.com/Document/I0f9fc126ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to consider, among other things, a model law to regulate title insurance agents. The group drafted a Model Title Insurance Agents Act. The proposed act would have regulated fidelity bonds, licensure, and education of agents.

Bar-related title assurance organizations assert that state statutes and regulations governing commercial title insurance companies should not be applied to them. They contend that neither the legislative branch nor the executive branch of government has authority to regulate the professional services and fees of lawyers.[19](#co_footnote_I7bd13495d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7bce9c80d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-25-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-4&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.66.270](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.270&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1580](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1580&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-103-301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-103-301&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-116&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 626.8412](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8412&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code. Ann. § 33-23-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-23-4&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:9-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a9-201&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2710](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2710&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. 155/16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f16&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code Ann. § 27-7-3-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-6&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.9-080(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.9-080&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); La. Stat. Ann. § 2092.3; [Mich. Comp. Laws Ann. § 500.7317](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7317&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Miss. Code Ann. § 8; [Mo. Rev. Stat. Ann. § 381.115](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.115&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-2002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-2002&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.100&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:15(I)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a15&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. §§ 59A-12-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-12-6&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [59A-12-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-12-13&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-26-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-10&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.22&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. §§ 2651.001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.001&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2651.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.051&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-316&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7bcec390d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.480(8)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.480&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 1702](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1702&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 626.841](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.841&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2710](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2710&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.9-020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.9-020&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.060](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.060&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-316&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7bcec391d6ee11ea8f41e1f6f2aa78) | This issue is discussed more in [§§ 3:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a1&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) Colorado, Michigan, and South Dakota are exceptions to this rule. *See* [Colo. Rev. Stat. § 10-2-601](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-2-601&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S. D. Codified Laws § 51A-4-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS51A-4-4&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Michigan law permits banks and lending institutions to “engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor” and to own insurance agencies. [Mich. Comp. Laws Ann. § 487.14101(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST487.14101&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7bcec393d6ee11ea8f41e1f6f2aa78) | [Ohio Rev. Code Ann. § 3953.21(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.21&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7bcec394d6ee11ea8f41e1f6f2aa78) | [Conn. Gen. Stat. § 38a-402(13)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-402&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7bceeaa3d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.480](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.480&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-102(9)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-102&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 1702](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1702&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 626.841](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.841&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.9-020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.9-020&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.060](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.060&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:2(VII)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a2&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2501.003(13)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.003&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-303(xix)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-303&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7bceeaa4d6ee11ea8f41e1f6f2aa78) | *See* [Idaho Code §§ 41-2705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2705&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-2713](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2713&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-101.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-101.01&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-4&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 59; [Tenn. Code Ann. § 56-35-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-105&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2703.001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.001&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7bceeaa5d6ee11ea8f41e1f6f2aa78) | *E.g.*, [Fla. Stat. Ann. § 626.2815 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.2815&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7bcf11b0d6ee11ea8f41e1f6f2aa78) | [Fla. Stat. Ann. § 626.8418](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8418&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance agent to have a deposit or to post a surety bond); [Fla. Stat. Ann. § 626.8419](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8419&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance agency to obtain a fidelity bond in an amount acceptable to insurer appointing the agency); [Idaho Code § 41-2710](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2710&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance agent to file a bond or cash deposit); [Idaho Code § 41-2711](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2711&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agent shall procure a corporate surety bond); Md. Ins. Code Ann. § 10-121(d) (this section, entitled “Title Insurance Agents,” requires an applicant for a license as a title insurance producer to file a fidelity bond, a surety bond, or a letter of credit); [Neb. Rev. Stat. § 44-19,109(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-19%2c109&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agent engaged in handling escrows shall obtain and maintain a surety bond, letter of credit, certificate of deposit, or deposit of cash or securities); [Ohio Rev. Code Ann. § 3953.23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.23&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agents shall be covered by a fidelity bond in an amount and with a company satisfactory to the principal); [Tenn. Code Ann. § 56-35-202](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-202&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance agents to file a bond or cash and/or securities with the insurance commissioner); [Tex. Ins. Code Ann. §§ 2651.101(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.101&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2651.102(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.102&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance agents to make, file, and pay for a surety bond with a corporate surety company, payable to the State Board of Insurance; in lieu of the bond, the agent may deposit cash, irrevocable letters of credit, or securities); [Utah Code Ann. § 31A-23a-204(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23A-204&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance agents appointed by insurers to maintain fidelity bonds or professional liability insurance policies or “an equivalent financial protection which the commission considers adequate”); [Utah Code Ann. § 31A-23a-204(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23A-204&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance agent appointed by insurer to maintain a reserve fund). |
| [10](#co_fnRef_I7bcf11b2d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.120&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1588](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1588&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12414.21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.21&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Code Regs. tit. 10, § 2556.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000937&cite=10CAADCS2556.2&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (commissioner may, as often as is reasonable and necessary, examine title insurers; the examination may include a review of rates, charges, fees, rating plans, rating systems, underwriting rules or policy forms adopted and used, loss or expense experience and data, statistics, or information collected or used by insurer in determining or establishing rates, charges, fees, rating plans, rating systems, underwriting rules, or policy forms which the insurer has adopted and uses); [Idaho Code § 41-2713](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2713&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f12&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code § 27-7-3-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-13&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-3&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.122](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.122&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-58](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-58&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-27-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-27-10&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3901.07(B)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3901.07&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 59; Wash. Rev. Code § 48.03. |
| [11](#co_fnRef_I7bcf11b3d6ee11ea8f41e1f6f2aa78) | Roberts, et al, Public Regulation of Title Insurance Companies and Abstracters, 56 (1961). |
| [12](#co_fnRef_I7bd10d80d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Idaho Code § 41-2710](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2710&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.9-440](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.9-440&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. §§ 2651.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.010&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2651.301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.301&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-321](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-321&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I7bd10d81d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 26(A) to (D). |
| [14](#co_fnRef_I7bd13490d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, §§ 19 and 24. |
| [15](#co_fnRef_I7bd13491d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 23(3). |
| [16](#co_fnRef_I7bd13492d6ee11ea8f41e1f6f2aa78) | McCarthy, NAIC: Sharpening the Focus on the Title Industry, 72 Title News 11 (March/April 1993). |
| [17](#co_fnRef_I7bd13493d6ee11ea8f41e1f6f2aa78) | McCarthy, NAIC: Sharpening the Focus on the Title Industry, 72 Title News 11 (March/April 1993). |
| [18](#co_fnRef_I7bd13494d6ee11ea8f41e1f6f2aa78) | McCarthy, NAIC: Sharpening the Focus on the Title Industry, 72 Title News 12 (March/April 1993). |
| [19](#co_fnRef_I7bd13495d6ee11ea8f41e1f6f2aa78) | This is discussed further in [§ 2:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a8&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Sections [18:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a8&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a15&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on the scope of business permitted, required, and prohibited for title insurance agencies, [§ 18:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a17&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on form filings, [§ 18:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a18&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on deposit requirements, and [§ 18:22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a22&originatingDoc=If4f4eb286fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on rate filings. |

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2 Title Ins. Law § 18:5 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:5. Organization of the title insurance business—Corporate formation requirements

Most states statutorily require that any title insurance company operating in the state must adopt a corporate form. In most states, this requirement is express.[1](#co_footnote_I7be3ab20d6ee11ea8f41e1f6f2a) Where the requirement is not express, it seems to be implied by the fact that the statutes provide no other licensing mechanism.[2](#co_footnote_I7be3d230d6ee11ea8f41e1f6f2a)

Further, most states require that a title insurer be formed as a stock insurer, as opposed to forming under a mutual corporate structure.[3](#co_footnote_I7be3f940d6ee11ea8f41e1f6f2a) A few states do not specifically require a stock corporation but require or permit a title insurer to be a corporation.[4](#co_footnote_I7be3f941d6ee11ea8f41e1f6f2a) The purpose of these requirements is to assure that title insurers will have sufficient financial reserves to meet claims made on the policies they issue.[5](#co_footnote_I7be3f942d6ee11ea8f41e1f6f2a) Even in the few states which do not expressly mandate a corporate form,[6](#co_footnote_I7be42050d6ee11ea8f41e1f6f2a) the capital requirements for title insurance companies are sufficiently high that few businesses in non-corporate forms can meet them.[7](#co_footnote_I7be42051d6ee11ea8f41e1f6f2a) Nevertheless, in Maine, one title insurer reportedly has been able to organize as a mutual society.[8](#co_footnote_I7be42052d6ee11ea8f41e1f6f2a)

For the specific requirements of corporate formation—e.g., number of incorporators, capital stock requirements, corporate name restrictions, and content of the articles of incorporation and bylaws—one usually must refer to the state’s general corporate governance laws. Nevertheless, a few state title insurance statutes include specific requirements for the corporate formation of title insurers.[9](#co_footnote_I7be42053d6ee11ea8f41e1f6f2a) These requirements vary but often regulate the contents of the corporate charter, the minimum number of incorporators, the [**par value**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3770ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the stock to be issued, any limitations on the duration of the corporation’s existence, and the place where the articles of incorporation must be filed.

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| **Footnotes** | |
| [1](#co_fnRef_I7be3ab20d6ee11ea8f41e1f6f2aa78) | [Ala. Code §§ 27-3-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-3-6&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [27-27-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-27-1&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. §§ 21.09.040](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.09.040&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.09.060](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.09.060&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. §§ 23-63-202](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-202&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [23-63-204](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-204&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Cal. Ins. Code Ann. §§ 699, 12394; [Colo. Rev. Stat. Ann. § 10-11-104](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-104&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, §§ 507](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S507&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [510](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S510&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [D.C. Code Ann. §§ 26-1301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000869&cite=DCCODES26-1301&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-1304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000869&cite=DCCODES26-1304&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [§ 26-1309](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000869&cite=DCCODES26-1309&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. §§ 624.404](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.404&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [624.406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.406&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. §§ 33-3-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-3-3&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [33-3-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-3-4&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-312(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-312&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. §§ 5/9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S5%2f9&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [155/2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f2&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code Ann. §§ 27-7-3-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-2&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [27-7-3-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-3&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kan. Stat. Ann. §§ 40-1101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-1101&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [40-1102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-1102&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. §§ 304.3-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-110&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [304.22-030](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-030&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS406&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mass. Gen. Laws Ann. ch. 175, § 47](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S47&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7302](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7302&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-2-106](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-106&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-304&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a4&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-6&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-5-12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-5-12&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6402&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.D. Cent. Code § 26.1-20-01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-01&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.04](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.04&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 5001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5001&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-4&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-102(12)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-102&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. §§ 2551.002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.002&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2552.002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2552.002&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Attorneys Title Insurance Company); [Vt. Stat. Ann. tit. 8, § 3302](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000883&cite=VT8S3302&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4603](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4603&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code § 48.29.020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.020&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [W. Va. Code § 33-3-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-3-2&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-304&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  In a few of these states, it is not clear whether the corporate form is mandatory or permissive. *See, e.g.,* [Ind. Code Ann. § 27-7-3-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-3&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  The Model Title Insurance Code also requires title insurers to be licensed and organized as stock corporations. |
| [2](#co_fnRef_I7be3d230d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. Ann. § 20-1563(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1563&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. Ann. § 38a-45](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-45&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. §§ 22:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a31&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [22:71](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a71&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [22:121](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a121&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 731.394](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.394&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7be3f940d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-3-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-3-6&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.09.060](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.09.060&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-63-204](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-204&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-104](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-104&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 510](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S510&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 624.406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.406&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-3-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-3-4&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-312](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-312&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.3-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-110&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7302](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7302&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.052](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.052&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-2-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-108&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a4&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-6&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.04](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.04&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 609](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S609&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 731.394](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.394&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-4&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4603](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4603&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. §§ 48.05.330](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.05.330&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [48.29.020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.020&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. §§ 26-3-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-3-107&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-23-304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-304&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7be3f941d6ee11ea8f41e1f6f2aa78) | *See* Cal. Ins. Code Ann. §§ 699, 12394; [Ind. Code § 27-7-3-19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-19&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mass. Gen. Laws Ann. ch. 175, § 47](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S47&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-1&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-5-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-5-15&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must be a stock or mutual corporation); [N.Y. Ins. Law § 6402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6402&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.D. Cent Code §§ 26.1-20-01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-01&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26.1-20-04](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-04&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be a stock or mutual corporation); [Tenn. Code Ann. § 56-35-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-105&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.051&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7be3f942d6ee11ea8f41e1f6f2aa78) | *See* Roberts, Public Regulation of Title Insurance Companies and Abstracters, 77 (1961). |
| [6](#co_fnRef_I7be42050d6ee11ea8f41e1f6f2aa78) | The following states do not appear to require title insurance companies to organize in a corporate form: [Nev. Rev. Stat. §§ 692A.011 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.011&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); R.I. Gen. Laws § 19-10-9; [S.D. Codified Laws Ann. § 58-25-16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-16&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. §§ 31A-1-301 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-1-301&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wis. Stat. Ann. § 601.04](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000260&cite=WIST601.04&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7be42051d6ee11ea8f41e1f6f2aa78) | Roberts, Public Regulation of Title Insurance Companies and Abstracters, 77 (1961). |
| [8](#co_fnRef_I7be42052d6ee11ea8f41e1f6f2aa78) | Mutual Title Insurance Company of Maine was organized as a mutual company. Roberts, Public Regulation of Title Insurers and Abstracters, 81 (1961). |
| [9](#co_fnRef_I7be42053d6ee11ea8f41e1f6f2aa78) | *See, e.g.,* [Mich. Comp. Laws § 500.5006](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.5006&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires 13 or more incorporators for a title insurance company); [Mich. Comp. Laws § 500.5014](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.5014&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires that par value of the capital stock of a title insurer must be at least $1); [N.Y. Ins. Law § 6402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6402&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires seven or more incorporators who are natural persons; requires directors to be citizens of U.S., a majority of whom are citizens of New York); [Utah Code Ann. § 31A-5-203](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-5-203&originatingDoc=If4f4eb2b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (articles of incorporation may not include as a purpose of the corporation doing a title insurance business). |

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2 Title Ins. Law § 18:6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:6. Organization of the title insurance business—Requirement of license or certificate of authority—Title insurers

States unanimously require that title insurers must obtain a license[1](#co_footnote_I7bf33b80d6ee11ea8f41e1f6f2a) or certificate of authority[2](#co_footnote_I7bf36290d6ee11ea8f41e1f6f2a) before they may do business in the state. A foreign insurer must acquire a license both from the state of its [**domicile**](http://practicallawconnect.thomsonreuters.com/Document/I6117211f4da011e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) as well as from any state in which it wishes to do business. To be licensed or certified, the title insurance company must meet deposit and financial requirements considered at §§ [18:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a21&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a26&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

An issue is what is meant by “doing business” in a state so as to subject a title insurer to that state’s licensure requirements. The Georgia Supreme Court held that a title insurer’s obtaining a [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) from an independent attorney did not mean the title insurance company was “doing business” in the county in which the attorney performed the search and in which the land was located.[3](#co_footnote_I7bf389a0d6ee11ea8f41e1f6f2a) The insurer subsequently issued the [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to the insured in another county. The court concluded, “We do not find any evidence in the record to indicate that any agent of Chicago Title was engaged in soliciting, negotiating, or transacting any title insurance business within the unincorporated area of the county.”[4](#co_footnote_I7bf389a1d6ee11ea8f41e1f6f2a) The county therefore could not assess a license fee against the title insurance company for doing business there.

Thus, merely issuing title insurance policies on real estate located in a particular jurisdiction does not necessarily mean that the title company is “doing business” in that jurisdiction. The Attorney General of Iowa presumably has arrived at that same conclusion. Iowa is the only state in which the business of title insurance is illegal.[5](#co_footnote_I7bf389a2d6ee11ea8f41e1f6f2a) However, it is not “doing business” in Iowa for a title insurer licensed in Nebraska to sell a policy in Nebraska which insures title to land that is situated in Iowa.[6](#co_footnote_I7bf389a3d6ee11ea8f41e1f6f2a) This was frequently done in large real estate transactions in Iowa in the 1980s. Lenders considered it necessary to obtain title insurance to enable their mortgages on land in Iowa to be sold into the national secondary mortgage market. Today, the State of Iowa has a housing finance authority which offers guarantees of land titles in the state.[7](#co_footnote_I7bf389a4d6ee11ea8f41e1f6f2a) The authority’s title guaranty division board approves the terms, conditions, and the form of the title guaranty contract.[8](#co_footnote_I7bf389a5d6ee11ea8f41e1f6f2a)

A title insurer usually must fulfill certain general requirements before the license or certificate of authority is issued. Such requirements may include filing documents of incorporation, fulfilling deposit, financial reserve, and investment requirements, and making form or rate filings. Many states specifically set out grounds for disapproval, suspension, or revocation of the title insurer’s certificate of authority or license.[9](#co_footnote_I7bf389a6d6ee11ea8f41e1f6f2a) Denial, suspension, or revocation may be warranted on grounds such as the following: (i) obtaining the license by fraud or misrepresentation; (ii) failure to meet express licensing requirements; (iii) for “good cause” or because the insurer is insolvent or in an “unsound” condition; (iv) fraudulent, coercive, or dishonest practices.[10](#co_footnote_I7bf3b0b0d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7bf33b80d6ee11ea8f41e1f6f2aa78) | *See* [Conn. Gen. Stat. § 38a-403](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-403&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must be licensed); [Haw. Rev. Stat. § 431:20-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-105&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.052](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.052&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. §§ 692A.110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.110&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.240](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.240&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. §§ 58-27-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-27-10&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [58-26-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-10&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.17&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires foreign title insurance companies to obtain licenses); 40 Pa. Cons. Stat. § 910-22 (foreign title insurance companies must be licensed); [Tex. Ins. Code Ann. § 2651.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.051&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance company must have license if it owns or operates an abstract plant); [Wyo. Stat. § 26-23-304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-304&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7bf36290d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.090&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-106](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-106&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 155/5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f5&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code § 27-7-3-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-6&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws § 500.7303](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7303&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-26-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-5&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3925.12(B)(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3925.12&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. tit. 36, § 5001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5001&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-106](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-106&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. §§ 2551.101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.101&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2551.102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.102&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code § 48.29.020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.020&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7bf389a0d6ee11ea8f41e1f6f2aa78) | [Chicago Title Ins. Co. v. Nash, 228 Ga. 719, 187 S.E.2d 662, 664 (1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972127670&pubNum=0000711&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_711_664&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_664). |
| [4](#co_fnRef_I7bf389a1d6ee11ea8f41e1f6f2aa78) | [Chicago Title Ins. Co. v. Nash, 228 Ga. 719, 720–721, 187 S.E.2d 662, 664 (1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972127670&pubNum=0000711&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_711_664&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_664). |
| [5](#co_fnRef_I7bf389a2d6ee11ea8f41e1f6f2aa78) | *See* [Iowa Code Ann. § 515.48(10)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS515.48&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7bf389a3d6ee11ea8f41e1f6f2aa78) | [Iowa Code Ann. § 515.48](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS515.48&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (note 36) (citing Op. Atty. Gen. Pringle (Dec. 5, 1979)). |
| [7](#co_fnRef_I7bf389a4d6ee11ea8f41e1f6f2aa78) | [Iowa Code Ann. §§ 16.1(39)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.1&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [16.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.2&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [16.91](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7bf389a5d6ee11ea8f41e1f6f2aa78) | [Iowa Code Ann. § 16.91(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7bf389a6d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. Ann. § 20-379](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-379&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (director may suspend title insurer’s certificate of authority if the title insurer deviates from rates); [Cal. Ins. Code § 12411](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12411&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (commissioner may suspend or revoke certificate of authority if title insurance company gives unlawful rebates or commissions), § 12414.16 (commissioner may suspend or revoke for any rate violation); [Idaho Code § 41-2708](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (guaranteeing payments of deeds of trust or mortgages is a ground for revocation or suspension); [215 Ill. Comp. Stat. Ann. § 155/5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f5&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (certificate of authority may be revoked if title insurer does not maintain required deposits), § 155/21 (agency may refuse to grant, may suspend, or revoke any certificate of authority on the following grounds: applicant has intentionally made a material misstatement or fraudulent misrepresentation; has misappropriated or tortiously converted or illegally withheld money held in a fiduciary capacity; has demonstrated untrustworthiness or incompetency in transacting title insurance in such a manner as to endanger the public; has materially misrepresented terms or conditions of contracts; has paid illegal commissions, discounts, premiums, or fees; has failed to comply with the deposit and reserve requirements of the statute); [Nev. Rev. Stat. § 692A.107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.107&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (fraud, refusal to deliver escrow funds or documents, and commingling of funds are grounds for refusal or suspension); [N.J. Stat. Ann. § 17:46B-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-8&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (commissioner may revoke license of foreign title insurance company if the company’s capital is impaired). |
| [10](#co_fnRef_I7bf3b0b0d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-3-21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-3-21&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. §§ 21.09.140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.09.140&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.09.150](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.09.150&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-220](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-220&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-63-910](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-910&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-1-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-1-110&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 520](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S520&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 624.418](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.418&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-3-17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-3-17&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:3-217](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a3-217&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-327](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-327&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 5/401.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S5%2f401.1&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.3-200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-200&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 417](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS417&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.436](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.436&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. Ann. § 60A.052](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS60A.052&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-1-29](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-1-29&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Ann. Stat. § 375.881](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST375.881&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-2-119](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-119&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 680A.200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST680A.200&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 619](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S619&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 731.418](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.418&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.C. Code Ann. § 38-5-120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-5-120&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-6-47](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-6-47&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-1-416](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-1-416&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-1040](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-1040&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-3-116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-3-116&originatingDoc=If4f4eb2e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:7 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:7. Organization of the title insurance business—Title insurance agents

An insurance agent generally is defined as an individual, partnership, or corporation authorized by an insurer to act as its representative and to solicit, negotiate, and effect contracts of insurance in its behalf.[1](#co_footnote_I7c08bf50d6ee11ea8f41e1f6f2a) Most states regulate the licensure of insurance agents. These laws will apply to title insurance agents unless they are expressly excepted from coverage. In several states where title insurance agents are excepted from general insurance laws, a separate set of regulations exists which applies to title agents.[2](#co_footnote_I7c08bf51d6ee11ea8f41e1f6f2a)

In many states, an applicant for an insurance agent’s license must take a written examination intended to determine competency in insurance matters. In some of those states, title insurance agents may be required to take a written examination covering subjects related to title insurance.[3](#co_footnote_I7c08bf52d6ee11ea8f41e1f6f2a) In other states, title insurance agents are simply exempted from the examinations required of general insurance agents.[4](#co_footnote_I7c08e660d6ee11ea8f41e1f6f2a)

Regulations also may require title insurance agents to complete continuing education requirements on a periodic basis,[5](#co_footnote_I7c08e661d6ee11ea8f41e1f6f2a) complete coursework before applying for a license,[6](#co_footnote_I7c08e662d6ee11ea8f41e1f6f2a) or have “reasonable experience” or a specific number of years employed in title examination and insurance.[7](#co_footnote_I7c08e663d6ee11ea8f41e1f6f2a) Several states require that title insurance agents be appointed by title insurance underwriters.[8](#co_footnote_I7c08e664d6ee11ea8f41e1f6f2a)

Some states prohibit a title agent or agency’s adopting certain names. A common prohibition is against a title agent or agency’s using a name containing the words “title insurance” unless those words are followed by the word “agent” or “agency.”[9](#co_footnote_I7c090d70d6ee11ea8f41e1f6f2a) A few states flatly prohibit an agent from using any name containing the words “title insurance,” “title guaranty,” or “title guarantee.”[10](#co_footnote_I7c090d71d6ee11ea8f41e1f6f2a)

Statutes also may denote grounds for refusal, suspension, or revocation of a title agent’s license. Grounds for denial, suspension, or revocation often include (i) failure to fulfill any of the statutory requirements for licensure, (ii) misrepresentation or fraud in obtaining the license, (iii) misrepresentation of any part of a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), (iv) lack of fitness or trustworthiness to represent a title insurer, (v) fraudulent or dishonest practices, (vi) misappropriation or conversion of money belonging to an insurance underwriter or an insured, (vii) writing controlled business, or (viii) unlawful rebating or dividing of fees.[11](#co_footnote_I7c090d72d6ee11ea8f41e1f6f2a) The agent who has had a license suspended or revoked should be entitled to notice and a hearing.

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| **Footnotes** | |
| [1](#co_fnRef_I7c08bf50d6ee11ea8f41e1f6f2aa78) | Roberts, et al., Public Regulation of Title Insurance Companies and Abstracters, 145 (1961). |
| [2](#co_fnRef_I7c08bf51d6ee11ea8f41e1f6f2aa78) | [Ala. Code §§ 27-3-27](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-3-27&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [27-25-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-2&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. §§ 20-1580](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1580&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [20-1583](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1583&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. §§ 10-11-116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-116&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10-11-117](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-117&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. §§ 626.841](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.841&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [626.8473](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8473&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 155/16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f16&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 10-121; [Nev. Rev. Stat. § 692A.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.100&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. §§ 416-A:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a15&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [416-A:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a16&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [416-A:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a20&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-12-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-12-13&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-26&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-101&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2651.002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.002&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-23a-204](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23A-204&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. §§ 26-23-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-316&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [26-23-321](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-321&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7c08bf52d6ee11ea8f41e1f6f2aa78) | *See* Cal. Ins. Code Ann. §§ 10-2-103(6), 10-2-402 (examination for insurance producer license shall reasonably test the individual applicant’s level of competence as to the particular line for which the individual applicant seeks qualification); [Fla. Stat. Ann. § 626.241](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.241&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (examination of applicants for title agent’s license must cover title insurance, abstracting, title searches, title examination, closing procedures, and escrow handling); [Mont. Code Ann. § 33-17-213](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-17-213&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (examination of title insurance producer must include questions about search and examination of title, title insurance, fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions); [Neb. Rev. Stat. § 44-4052](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-4052&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (insurance agents must pass examination testing knowledge concerning the lines for which application is made); [Tenn. Code Ann. § 56-35-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-201&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires agents to take an examination covering title searches and title examination); [Utah Code Ann. § 31A-23a-204](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23A-204&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires that examination for title insurance agent licensure include questions regarding the search and examination of title to real property); [Wyo. Stat. Ann. § 26-23-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-316&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agent examination must cover the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, closings, and settlements of real estate transactions). |
| [4](#co_fnRef_I7c08e660d6ee11ea8f41e1f6f2aa78) | *See* Del. Reg. No. 47, § 5 (continuing education requirements do not apply to title insurance agents); [24-A Me. Rev. Stat. Ann. § 1420-H](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS1420-H&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (applicant for license as a title insurance producer who is an attorney licensed to practice law in Maine is exempt from the examination requirement); [N.M. Stat. Ann. § 59A-12-16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-12-16&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agent is exempt from examination requirements) [Or. Rev. Stat. Ann. § 744.067(5)(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS744.067&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (exempts an applicant for a title insurance agent license from requirement to complete prelicensing education or take examination). |
| [5](#co_fnRef_I7c08e661d6ee11ea8f41e1f6f2aa78) | *See* [Ark. Code Ann. § 23-103-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-103-316&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (licensed title insurance agents must successfully complete four hours of continuing education annually); [Col. Rev. Stat. § 10-2-301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-2-301&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires 24 hours of continuing education within the 24 months after the date the insurance producer’s license is required to be renewed); [Fla. Stat. Ann. § 626.2815(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.2815&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (as amended by FL House Bill 643 2012, each title insurance agent must complete 10 hours of continuing education every two years in title insurance and escrow management, including at least 3 hours of ethics); [Mont. Code Ann. § 33-17-1203](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-17-1203&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (insurance producer must complete at least 24 hours of continuing education every two years); [N.M. Stat. Ann. § 59A-12-26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-12-26&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency may require continuing education of agents); [Okla. Stat. Ann. tit. 36, § 1435.29](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S1435.29&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires 14 hours of continuing education every two years & seems to apply to title insurers under [Okla. Stat. Ann. tit. 36, § 5005](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5005&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))); [Tex. Ins. Code Ann. § 2651.204](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.204&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (department of insurance shall prescribe up to 15 hours of continuing education every two years for title insurance agents); [Va. Code Ann. § 38.2-1866(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-1866&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires 16 hours of continuing education credit). |
| [6](#co_fnRef_I7c08e662d6ee11ea8f41e1f6f2aa78) | *See* [Conn. Gen. Stat. § 38a-702e](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-702E&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (applicants for an insurance producer license shall have successfully completed (1) an approved course requiring 40 hours for each line of insurance for which the applicant is applying to be licensed; or (2) equivalent experience or training) (*but see* [Conn. Gen. Stat. § 38a-413](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-413&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title agents are exempt from penalties imposed for acting as a producer without a license)); [Fla. Stat. Ann. § 626.8417](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8417&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (within the four years preceding application for a title insurance license, the applicant must have had a 40-hour course on title insurance or have at least 12 months’ experience with title insurance duties); [Neb. Rev. Stat. § 44-3909](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-3909&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), (title insurance agent’s license requires six hours of education on insurance industry ethics and six hours of education in the area of title insurance); [Tex. Ins. Code Ann. § 2651.204](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.204&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (up to 15 hours of coursework required for continuation of title insurance agent’s license). |
| [7](#co_fnRef_I7c08e663d6ee11ea8f41e1f6f2aa78) | *See* [Idaho Code § 41-2710](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2710&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), Md. Insurance Code Ann. § 10-104, [Tex. Ins. Code Ann. § 2651.002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.002&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7c08e664d6ee11ea8f41e1f6f2aa78) | *See* [Conn. Gen. Stat. § 38a-402(13)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-402&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title agent means any person authorized in writing by a title insurer to (A) solicit title insurance business, (B) collect premiums, (C) determine the insurability of a risk in accordance with underwriting rules and standards prescribed by the title insurer, or (D) issue policies of the title insurer); [Del. Code Ann. tit. 18, § 1702(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1702&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 626.841](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.841&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title agent must be appointed in writing by title insurer), § 626.331(5) (title agent limited to selling title insurance only for appointing title insurance underwriters), § 626.8421 (title agent must have a separate appointment as to each insurer by which she is appointed to work as an agent); [Idaho Code § 41-2710](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2710&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agent must by authorized in writing to solicit insurance, issue or countersign policies, or otherwise engage in the title insurance business); [Nev. Rev. Stat. § 692A.060](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.060&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title agent is a person, firm, or corporation appointed by a title insurer), [Nev. Admin. Code §§ 692A.040](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1011478&cite=NVADC692A.040&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1011478&cite=NVADC692A.080&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1011478&cite=NVADC692A.090&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (qualification for a title insurance agent’s license include being appointed by title insurer); [Ohio Rev. Code Ann. § 3953.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.01&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agent is one who is authorized in writing by title insurance company to solicit insurance, collect premiums, or countersign policies); 40 Pa. Cons. Stat. Ann. § 910-24 (title insurance agent is one who is authorized in writing by title insurance company to solicit insurance; collect premiums; and handle escrows, settlements, or closings); [W. Va. Code § 33-1-12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-1-12&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-316&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7c090d70d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.300](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.300&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. § 20-1583](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1583&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-117](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-117&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 626.8413](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8413&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a16&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7c090d71d6ee11ea8f41e1f6f2aa78) | *See* [Neb. Rev. Stat. § 44-19,109 (2)(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-19%2c109&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.24&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. Ann. § 910-29. |
| [11](#co_fnRef_I7c090d72d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. Ann. § 20-379](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-379&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (director may revoke agent’s license if agent deviates from rates), § 20-1581 (director may revoke agent’s license upon finding that agent has violated applicable title insurance law), § 20-1582 (agent’s failure to promptly reply to director’s inquiries is a ground for revocation of license); [Ark. Code Ann. § 23-103-312](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-103-312&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (after a hearing, the title insurance agents’ licensing board may revoke a license for a violation of any of the provisions of the chapter; upon a conviction of the holder of a license of a crime involving moral turpitude; or if the board finds the holder of the license to be guilty of habitual carelessness or of fraudulent practices); [Fla. Stat. Ann. § 626.8437](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8437&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (grounds for mandatory denial, suspension, revocation, or refusal to renew license include lack of one or more statutory qualifications for license, material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain a license, willful misrepresentation of any part of a title insurance policy in dissemination or advertising, demonstrated lack of fitness or trustworthiness to represent a title insurer, fraudulent or dishonest practices, misappropriation, conversion, or unlawful withholding of money belonging to insurer or insured, unlawful rebating, willful failure to comply with any proper regulatory agency rule or order, having been found guilty, or having pleaded guilty or nolo contendere to a felony); [Idaho Code § 41-2710](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2710&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f21&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. §§ 692A.105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.105&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.107&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency may refuse to license or may suspend or revoke the license if, upon a hearing, it is determined that the title agent is insolvent, has violated any provision of the title insurance statutes or regulations, has committed fraud, had knowingly made any misrepresentation or false statement from any principal, has knowingly made any false representation of a material fact to or has withheld any information from the commission, has failed to furnish the parties of an escrow transaction any money, documents, or properties held in escrow, has refused to permit an examination of agent’s books and affairs by the agency, has been convicted of a felony or misdemeanor of which an essential element is fraud, has failed to maintain complete and accurate records of all transactions within the last seven years, has commingled money of others with agent’s own, or has failed to disclose in writing that agent is acting in the dual capacity of escrow agent and undisclosed principal in any transaction; agency may suspend or revoke license if agent failed to maintain adequate supervision of an escrow officer or has instructed an escrow officer to commit an act which would be cause for the revocation of the escrow officer’s license); [N.C. Gen. Stat. § 58-33-46](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-33-46&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under this article for violations of applicable law and a number of fraudulent and dishonest practices); [Ohio Rev. Code Ann. § 3953.23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.23&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (superintendent may revoke agent’s license if agent fails to maintain records or if agent commingles funds); [Okla. Stat. Ann. tit. 36, § 1435.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S1435.13&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-27](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-27&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agent’s failure to properly maintain records, books, and accounts are grounds for revocation of license), § 910-28 (agent’s failure to promptly reply to commissioner’s inquiries is a ground for revocation of license); [Tex. Ins. Code Ann. § 2651.301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2651.301&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (grounds for license denial); [Wyo. Stat. § 26-23-321](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-321&originatingDoc=If4f4eb316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (grounds for denial or suspension of a license). |

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2 Title Ins. Law § 18:8 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:8. Scope of business permitted, required, and prohibited

The scope of the business of title insurers in a state will depend upon statutory definitions of title insurance and matters “related to” the business of title insurance.

Most states define title insurance as insurance of those who have interests in real property, or liens or encumbrances on real property, against loss because of encumbrances, title defects, and invalidity of or adverse claims to title.[1](#co_footnote_I7c203ef0d6ee11ea8f41e1f6f2a) See [§ 18:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a3&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Insurance against unmarketability of title is included in some states’ statutes.[2](#co_footnote_I7c203ef2d6ee11ea8f41e1f6f2a)

In addition to defining “title insurance,” many states list “powers” permitted to title insurers in the state.[3](#co_footnote_I7c206600d6ee11ea8f41e1f6f2a) Statutes vary in terms of how broadly or narrowly they delineate the powers permitted to title insurance companies in the state. For example, Tennessee and certain other states narrowly limit the powers of title insurance companies to determining the insurability of titles and issuing title insurance policies.[4](#co_footnote_I7c206601d6ee11ea8f41e1f6f2a) In contrast, some states expressly permit title insurance corporations to engage in activities that are “connected with,” “related to,” or “not inconsistent with” the issuance of title insurance policies.[5](#co_footnote_I7c208d10d6ee11ea8f41e1f6f2a) Many statutes contain language that specifically empowers title insurance companies to abstract and examine titles, as well as insure them. Statutes in Alaska and Nevada broadly define powers of title insurance companies to include examining titles, providing escrow and closing services, and performing any other services related or incidental to the sale and transfer of real or personal property.[6](#co_footnote_I7c208d11d6ee11ea8f41e1f6f2a) Statutes in Michigan, New York, Utah, Kentucky, Illinois, and California also broadly define powers of title insurance companies to include not only examination of titles and issuance of policies but also handling of escrows, preparing other instruments that may be required before a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) can be issued, and closing real estate transactions in which title insurance is being issued.[7](#co_footnote_I7c208d12d6ee11ea8f41e1f6f2a)

The Model Title Insurance Act, promulgated by the National Association of Insurance Commissioners in 1982, defines the title insurance “premium” to include any fees charged for issuing the title insurance policy; abstracting, searching, and examining the title in conjunction with the intended issuance of a title insurance policy; and preparing preliminary title reports or commitments for title insurance.[8](#co_footnote_I7c20b420d6ee11ea8f41e1f6f2a) Few states have adopted that Model Act, however.

While a real estate settlement activity might be permitted for title insurers by the state insurance code, that does not necessarily mean a title insurer performing that activity will be protected from charges of the unauthorized practice of law. In some cases, where the state insurance code appeared to permit title insurers to provide a service that traditionally has been considered the practice of law, courts have invalidated the insurance code provision for being inconsistent with state statutes or constitutional provisions prohibiting the unauthorized practice of law.[9](#co_footnote_I7c20b421d6ee11ea8f41e1f6f2a) Section 13:6 considers particular activities of title insurance companies that have been held to be the unauthorized practice of law.

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| **Footnotes** | |
| [1](#co_fnRef_I7c203ef0d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-5-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-5-10&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-62-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-62-108&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 908](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S908&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 624.608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.608&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code Ann. § 27-7-3-2(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-2&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.5-090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.5-090&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. § 22:6(9)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a6&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 709](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS709&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 1-101(qq); [Mont. Code Ann. § 33-1-212](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-1-212&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 709](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S709&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 731.190](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.190&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws § 58-9-33](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-9-33&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. § 48.11.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.11.100&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [W. Va. Code § 33-1-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-1-10&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-5-109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-5-109&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Some state’s statutes may be construed a little more broadly because their definitions of title insurance include services connected with the insuring of title to or interests in real property. *See* [La. Rev. Stat. Ann. § 22:6(9)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a6&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. § 48.11.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.11.100&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7c203ef2d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.480(6)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.480&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1562(8)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1562&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-102(8)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-102&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-7-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-7-8&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. 155/3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f3&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7301&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-201(15)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-201&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 681A.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST681A.080&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a2&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-1&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.01&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-1(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-1&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-1-301(156)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-1-301&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7c206600d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. Ann. § 20-1565](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1565&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-107&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code Ann. § 27-7-3-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-4&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.22-030](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-030&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Stat. Ann. § 22:2092.4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a2092.4&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7304&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. Ann. § 68A.01(5)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS68A.01&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. Ann. 381.055](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.055&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-201&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1983](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1983&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a7&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-10&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6403](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6403&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 5003](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5003&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-103&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.051&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  Defining “the business of title insurance,” *see* [Cal. Ins. Code § 12340.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.3&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. 155/3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f3&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Stat. Ann. § 22:2092.2(17)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a2092.2&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1981](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1981&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.01(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.01&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-1(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-1&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws § 58-25-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-1&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-102(11)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-102&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2501.005](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.005&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. Ann. § 26-23-303(xx)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-303&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7c206601d6ee11ea8f41e1f6f2aa78) | *See* [Tenn. Code Ann. § 56-35-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-102&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Ala. Code §§ 27-25-9(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-9&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [34-3-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS34-3-6&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [34-3-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS34-3-7&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (persons engaged in insuring titles are prohibited from preparing deeds, conveyances, mortgages; can prepare simple affidavits of fact not to be recorded); [Ariz. Rev. Stat. Ann. §§ 20-1567](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1567&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [20-2203](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-2203&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. §§ 10-11-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-102&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10-11-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-107&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10-11-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-108&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (determining insurability and insuring titles); [N.H. Rev. Stat. Ann. § 416-A:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a2&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (business of title insurance means making policies of title insurance); [N.J. Rev. Stat. § 17:46B-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-1&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (business of title insurance includes examining titles and making title insurance policies), § 17:46B-13 (no title insurance company shall render legal services or legal opinions and may not perform acts which are prohibited by the New Jersey Supreme Court); [N.C. Gen. Stat. § 58-26-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-1&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (furnishing information in relation to real estate titles and insuring titles; closings must be performed by approved attorneys); [Tenn. Code Ann. §§ 56-35-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-102&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to 104 (title insurance companies’ powers include determining insurability and insuring titles). |
| [5](#co_fnRef_I7c208d10d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. Ann. § 20-1565](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1565&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. § 22:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a6&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 3311](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS3311&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 693A.030](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST693A.030&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-10&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 5003](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5003&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. § 48.11.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.11.100&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7c208d11d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. §§ 21.66.170](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.170&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.66.180](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.180&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.110&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7c208d12d6ee11ea8f41e1f6f2aa78) | [Colo. Rev. Stat. Ann. § 10-11-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-102&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))(3, 3.5) (transacting or proposing to transact any phase of title insurance, including transacting matters subsequent to the execution of the contract and arising out of it, and the performance of closing and settlement services, defined as providing services for the benefit of all necessary parties in connection with transactions involving interests in and to real property, and escrow services).  Cal. [§ 12340.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.3&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, or execution of a title policy, insuring and transacting matters subsequent to the execution of a title policy and arising out of such policy; the performance of any service in conjunction with the issuance or contemplated issuance of a title policy including, but not limited to, the handling of any escrow, settlement, or closing in connection therewith).  [Fla. Stat. Ann. § 627.7711(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7711&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Related title services” means services performed by a title insurer or title insurance agent, including, but not limited to, preparing or obtaining title information, preparing documents necessary to close the transaction, and conducting closings).  [Haw. Rev. Stat. Ann. § 431:20-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-102&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance business includes handling of escrows, settlements, or closings when conducted or performed in contemplation of the issuance of a title insurance policy).  [Mich. Comp. Laws Ann. § 500.7304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7304&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurers may issue title insurance; make, execute, and perfect contract agreements, policies, and other instruments as may be required therefor; examine titles; issue commitments for title insurance policies specifying requirements; and act as escrow agent).  [Mont. Code Ann. §§ 33-25-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-105&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [33-25-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-201&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (handling closings, executing policies, reports, and commitments, searching and examining titles, and transacting matters subsequent to the issuance of a policy and arising out of it).  [Nev. Rev. Stat. § 692A.110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.110&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (engage in title insurance business, conduct escrows and closings, and provide “any other service related or incidental to the sale and transfer of property” if the insurance commissioner has not disapproved the service).  [N.Y. Ins. Law § 6403](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6403&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (search titles and issue title insurance policies, examine titles, and furnish information in relation thereto); [N.Y. Jud. Law § 495](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000091&cite=NYJUS495&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (statute prohibiting unauthorized practice of law does not apply to examination and insuring of titles, “preparation of any deeds, mortgages, assignments, discharges, leases or any other instruments affecting real property insofar as such instruments are necessary to the examination and insuring of titles”).  [Tex. Ins. Code Ann. §§ 2501.005](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.005&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2501.006](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.006&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (business of title insurance includes making title insurance policies, title examinations, closing transactions and investigating proper execution, acknowledgement, delivery, and recording of all conveyances, mortgage papers, and other title instruments which may be necessary to the consummation of the transaction).  [Utah Code Ann. §§ 31A-4-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-4-107&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [31A-23a-406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23A-406&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (abstracting title, providing escrow services, closing real estate transactions “or other services incidental to the sale or transfer of insurance related to the sale or transfer of real property”).  [Wyo. Stat. §§ 26-23-303](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-303&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-23-305](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-305&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-23-314](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-314&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (insuring correctness of title searches, handling escrows and closings, searching and examining title, providing other services related to the sale and transfer of property).  [Ky. Rev. Stat. Ann. § 304.22-030](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-030&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (examine titles to real property and procure and furnish information relative thereto; make and issue title insurance policies and “other instruments as may be required to insure owners of real estate … and mortgages … from loss”).  [Cal. Ins. Code § 12340.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.3&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (business of title insurance includes issuing policies, transacting matters subsequent to the execution of a title policy and arising out of such policy, and performing any service in conjunction with the contemplated issuance of a title policy including handling escrows and closings).  [Idaho Code § 41-2704](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2704&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (making title certificates, policies, preliminary reports, handling escrows and closings, and transacting any phase of title insurance, including matters subsequent to the issuance of such contract).  [215 Ill. Comp. Stat. Ann. § 155/3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f3&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (examining title, executing title insurance policies, handling of escrows, settlement, and closings). |
| [8](#co_fnRef_I7c20b420d6ee11ea8f41e1f6f2aa78) | Title insurers, like all other insurance lines, are regulated by the various insurance departments. These regulators have a trade association, the National Association of Insurance Commissioners (NAIC), that assists state insurance regulatory officials in maintaining and improving state regulation of insurance, maintaining reliability and financial solidity of insurance institutions and in the fair and equitable treatment of policyholders and claimants. McCarthy, NAIC: Sharpening the Focus on the Title Industry, 72 Title News 11 (March/April 1993). |
| [9](#co_fnRef_I7c20b421d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [New Jersey State Bar Ass’n v. Northern New Jersey Mortg. Associates, 32 N.J. 430, 161 A.2d 257, 266 (1960)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1960106549&pubNum=0000162&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_266&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_266) (overruled by, [In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995071125&pubNum=0000162&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))). In [In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995071125&pubNum=0000162&originatingDoc=If4f4eb346fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))), the court held that the practice of conducting residential real estate closings and settlements without the presence of attorneys to represent vendor and purchaser is not unauthorized practice of law, so long as the broker notifies the vendor and purchaser of the conflicting interests of brokers and title companies, and of the general risk involved in not being represented by an attorney. |

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2 Title Ins. Law § 18:9 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:9. Scope of business permitted, required, and prohibited—General power to insure titles

All but one state authorizes the formation of a title insurance company for the general purpose of insuring titles.[1](#co_footnote_I7c2aed50d6ee11ea8f41e1f6f2a) The exception is Iowa.

Iowa prohibits insurance companies from insuring against loss or damage by reason of defective title or encumbrances.[2](#co_footnote_I7c2b1462d6ee11ea8f41e1f6f2a) Although Iowa prohibits insurance companies from insuring titles, the state recently established a title guaranty program within the Iowa Finance Authority to give guarantees against loss or damage caused by defective title to real property.[3](#co_footnote_I7c2b1463d6ee11ea8f41e1f6f2a) [Iowa Code § 16.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.2&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) establishes the Title Guaranty Division within the Iowa Finance Authority. The purpose of the Title Guaranty Program is to bolster the abstract and attorney title opinion method of title assurance in Iowa by providing a mechanism to provide for guarantees of real property titles.[4](#co_footnote_I7c2b1464d6ee11ea8f41e1f6f2a) The Title Guaranty Division issues title guarantees on real property, sets and collects charges for the guarantees, and is authorized to purchase reinsurance against loss in connection with the guarantees.[5](#co_footnote_I7c2b1465d6ee11ea8f41e1f6f2a) [Section 1:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a5&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise more fully discusses Iowa’s Title Guaranty Program and other title insurance alternatives.

[Iowa Code § 16.91](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) contains requirements like those of states which allow title insurance companies to contract title insurance. [Iowa Code § 16.91](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) requires the Title Guaranty Division to approve forms of the guaranty contract, to set a charge for the guaranty in an amount sufficient to permit the program to be self-sustaining, and to maintain a claims reserve. The statute also mandates that the [**abstract of title**](http://practicallawconnect.thomsonreuters.com/Document/Ieaf7162d641111e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to the property be brought up to date and that an attorney’s opinion be obtained before any title guaranty is issued.

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| **Footnotes** | |
| [1](#co_fnRef_I7c2aed50d6ee11ea8f41e1f6f2aa78) | *See* statutes cited in §§ [18:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a5&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a7&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7c2b1462d6ee11ea8f41e1f6f2aa78) | [Iowa Code Ann. § 515.48](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS515.48&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7c2b1463d6ee11ea8f41e1f6f2aa78) | [Iowa Code Ann. §§ 16.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.1&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [16.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.5&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [16.91](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7c2b1464d6ee11ea8f41e1f6f2aa78) | [Iowa Code Ann. § 16.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.3&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7c2b1465d6ee11ea8f41e1f6f2aa78) | [Iowa Code Ann. § 16.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.5&originatingDoc=If4f4eb376fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:10 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:10. Scope of business permitted, required, and prohibited—Prohibition of other insurance lines

Many states prohibit title insurers from transacting any insurance lines other than title insurance.[1](#co_footnote_I7c354d90d6ee11ea8f41e1f6f2a) The Model Title Insurance Code also would bar title insurers from selling other types of insurance.[2](#co_footnote_I7c3574a0d6ee11ea8f41e1f6f2a)

Conversely, Arkansas and Nevada do allow an insurer to transact multiple lines of insurance, including title insurance.[3](#co_footnote_I7c3574a2d6ee11ea8f41e1f6f2a)

Single-line insurance limitations may be construed in a few states to prohibit title insurers from issuing closing protection letters or to limit the terms of such letters. See [§ 18:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a15&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

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| **Footnotes** | |
| [1](#co_fnRef_I7c354d90d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-3-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-3-6&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.66.190](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.190&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. §§ 20-209](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-209&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [20-1563](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1563&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12360](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12360&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-108&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-45](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-45&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 510](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S510&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 627.786](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.786&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-3-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-3-4&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-106](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-106&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-312](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-312&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.3-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-110&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. §§ 22:71](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a71&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [22:2092.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a2092.5&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1984](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1984&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a8&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. 17:46B-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-5&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:46B-12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-12&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-5-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-5-15&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Code § 6403](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6403&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. §§ 3953.03](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.03&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [3953.10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.10&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 609](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S609&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 731.394](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.394&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-13&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-6-22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-6-22&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2502.001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2502.001&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. §§ 38.2-135](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-135&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [38.2-4603](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4603&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. § 48.05.330](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.05.330&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. §§ 26-3-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-3-107&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-23-306](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-306&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7c3574a0d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Code § 6(A) (1982). The Model Code is discussed more fully in [§ 18:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a4&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7c3574a2d6ee11ea8f41e1f6f2aa78) | [Ark. Code Ann. § 23-63-204](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-204&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 681A.090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST681A.090&originatingDoc=If4f4eb3a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:11 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:11. Scope of business permitted, required, and prohibited—Title plants and abstracting

As discussed in §§ [1:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a7&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [1:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a11&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), title insurance evolved from the abstract and attorney opinion method of title assurance. Today, in many regions, title insurance underwriters and title insurance agencies own title plants and perform the functions of abstract companies. Many states expressly authorize a title insurer to engage in abstracting.[1](#co_footnote_I7c463d81d6ee11ea8f41e1f6f2a) Several states also either empower or specifically require a title insurer or its title agent to own or control a title plant, tract indexes, or abstract records.[2](#co_footnote_I7c463d82d6ee11ea8f41e1f6f2a) Such a statute implies at least the power to engage in title searching and abstracting in states that do not have statutes expressly authorizing those activities. A title insurance company usually may satisfy the requirement of owning or controlling a title plant by entering into agreements to share such records and facilities with other title companies.[3](#co_footnote_I7c463d83d6ee11ea8f41e1f6f2a)

An Oklahoma statute requires that every policy of title insurance issued in the state must be countersigned by a person, partnership, corporation, or agency that is bonded and licensed as an abstractor.[4](#co_footnote_I7c466490d6ee11ea8f41e1f6f2a) The resulting practice is that title insurance underwriters have either contracted with established local abstract companies to act as their agents or have purchased local abstract companies and become licensed as abstractors themselves. In addition, Oklahoma Attorney General Opinions state that: (a) the title examination is the key to the entire conveyancing process, and it must be based on a thorough knowledge of property law; (b) by definition, a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) expresses an opinion as to the marketability of title; and, (c) this opinion is relied upon by another, the title insurance applicant. For these reasons, the Attorney General has approved the state insurance commission’s practice of permitting title insurers to issue a policy in the state only after an attorney has examined the abstract and issued an opinion.[5](#co_footnote_I7c466491d6ee11ea8f41e1f6f2a)

In some states, statutes regulating abstractors will exist separately from statutes regulating title insurers who have been licensed to operate in the state. The title insurer that attempts to do its own abstracting will have to comply with statutes regulating abstractors as well. Abstractors are required to own or have access to records, indexes, or a title plant which meets certain standards. North Dakota, for example, requires that any licensed abstractor must have a complete set of abstract records for the county in which it is situated.[6](#co_footnote_I7c466492d6ee11ea8f41e1f6f2a) In addition, most states that regulate abstractors require individual abstractors to pass an examination in order to receive a license.[7](#co_footnote_I7c466493d6ee11ea8f41e1f6f2a)

Traditionally, an abstractor was only liable for negligence in searching a title and preparing an abstract to those with whom the abstractor was in [**privity of contract**](http://practicallawconnect.thomsonreuters.com/Document/I59dceb47ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). Today, in most states, an abstractor may be liable for loss resulting from negligence to the seller, purchaser, and the lender in the real estate transaction for which the abstract was purchased.[8](#co_footnote_I7c483950d6ee11ea8f41e1f6f2a)

In addition to the preceding statutes, the title insurance industry has had state statutes introduced defining terms such as abstract, preliminary report and title insurance commitment in order to distinguish these title insurance products from abstracts and to avoid the results of cases finding title insurers liable for failing to disclose all title defects before an insured’s closing.[9](#co_footnote_I7c486060d6ee11ea8f41e1f6f2a) *See supra* [§ 12:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a7&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing statutes stating that title insurers’ preliminary reports are not abstracts, and §§ [12:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a5&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [12:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a8&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing cases litigating whether title insurers are liable for failing to discover and disclose of-record title defects.

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| **Footnotes** | |
| [1](#co_fnRef_I7c463d81d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.210](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.210&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-107&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. Ann. § 68A.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS68A.01&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-1&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a7&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-3&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 1735.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS1735.01&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-103&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.051&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-4-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-4-107&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. §§ 26-23-303](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-303&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-24-103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-24-103&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-24-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-24-108&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7c463d82d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.200&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1567](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1567&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may not write title insurance in a county with over 100,000 people unless insurer or its agent maintains a title plant covering that county); [Idaho Code § 41-2702](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2702&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (if title insurer does not own and maintain tract indexes or abstract records, it must have its title insurance policies countersigned by a person or entity who does own or maintain tract indexes or abstract records), § 41-2710 (title insurance agent must own or lease, separately or with another licensed agent, a complete set of tract indexes and abstract records of each county for which polices are written), § 41-2708 (title insurer or its agent must own or lease tract indexes and abstract records of the county in which the property is located); Idaho Dep’t of Ins. Reg. 18.01.01.011 (required tract indexes and abstract records defined); [N.M. Stat. Ann. § 59A-12-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-12-13&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); N.M. Regs. ch. 59A § 30-C-IV (title insurance agent must own, operate, or control an abstract plant having been maintained for the previous 20 years in each county in which the agent operates); [Okla. Stat. Ann. tit. 36, § 5001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5001&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (every title insurance policy must be countersigned by one engaged in abstract of title business in Oklahoma or by an attorney duly appointed as agent of the title insurance company); [Or. Rev. Stat. § 731.438](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.438&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer and its agent must own and maintain a title plant covering a period of the preceding 50 years for lands in counties where policies are to be issued), [Or. Admin. R. 836-010-0140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013613&cite=ORADC836-010-0140&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title plant shall maintain adequate maps that will allow a person to locate a tract of land, the title plant shall maintain a general index, the title plant shall maintain a currently posted tract or geographic index); [Tex. Ins. Code Ann. § 2501.003 (13)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2501.003&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title agent is one who owns, leases, or controls an abstract plant …); [Wash. Rev. Code § 48.29.020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.020&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must own or lease and maintain tract indexes for the county in which its principal office is located), § 48.29.040 (title insurer may transact title insurance in counties other than where the insurer’s principal office is located only if the insurer or its agent owns or leases and maintains tract indexes in those counties), § 48.29.160 (1984) (title insurance agent must own or lease and maintain tract indexes in counties in which the agent will do business). |
| [3](#co_fnRef_I7c463d83d6ee11ea8f41e1f6f2aa78) | *See* [Wash. Rev. Code § 48.29.160](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.160&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Alaska Stat. § 21.66.240](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.240&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 5-104(h); [N.H. Rev. Stat. Ann. § 416-A:14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a14&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.14&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-32(21). |
| [4](#co_fnRef_I7c466490d6ee11ea8f41e1f6f2aa78) | [Okla. Stat. Ann. tit. 36, § 5001(C)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5001&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7c466491d6ee11ea8f41e1f6f2aa78) | 10 Op. Att’y Gen. 425 (1978) and 83 Op. Att’y Gen. 281 (1984). |
| [6](#co_fnRef_I7c466492d6ee11ea8f41e1f6f2aa78) | [N.D. Cent. Code § 43-01-09(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST43-01-09&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Okla. Stat. Ann. tit. 74, § 227.15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT74S227.15&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. Ann. § 33-2-101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS33-2-101&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). One state not imposing explicit requirements concerning title plants or abstract records is Idaho. [Idaho Code §§ 54-101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS54-101&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [54-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS54-105&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7c466493d6ee11ea8f41e1f6f2aa78) | [Ark. Code Ann. § 17-11-302](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS17-11-302&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. Ann. § 386.65](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS386.65&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. §§ 36-13-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS36-13-1&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [36-13-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS36-13-8&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Minnesota and Arkansas law appears to exempt attorneys from examinations to prove their competency in abstracting. [Minn. Stat. Ann. § 386.75](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS386.75&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 17-11-302(e)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS17-11-302&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Kansas, North Dakota, and South Dakota require all applicants for an abstractor’s license to take an exam. [Kan. Stat. Ann. § 58-2805](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS58-2805&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.D. Cent. Code § 43-01-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST43-01-10&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 36-13-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS36-13-13&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7c483950d6ee11ea8f41e1f6f2aa78) | Furthermore, the abstractor’s liability may be expanded to any person who sustains damages by acting in reliance on the abstract. *See* [Or. Rev. Stat. § 30.750](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS30.750&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* Patton & Palomar on Land Titles § 46 (3d ed.) |
| [9](#co_fnRef_I7c486060d6ee11ea8f41e1f6f2aa78) | *See generally* [Courchaine v. Commonwealth Land Title Ins. Co., 174 Wash. App. 27, 296 P.3d 913 (Div. 3 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030118716&pubNum=0004645&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  Before the court could reach and decide the issue, the legislature acted. In 1997, it amended the insurance code to clarify the distinction between preliminary reports or commitments, on the one hand, and abstracts of title on the other, including to clarify some of the responsibilities associated with each form. Laws of 1997, ch. 14, § 1 (adding a new subsection (3) to [RCW 48.29.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.010&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))); [*Barstad,* 145 Wash.2d at 536, 39 P.3d 984](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002127403&pubNum=0004645&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). As a result of the amendment, “title policy” means, by statute, “any written instrument, contract, or guarantee by means of which title insurance liability is assumed.” [RCW 48.29.010(3)(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.010&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). A preliminary commitment “is *not* a representation of the condition of title, but a ‘statement of terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted.’” [*Barstad,* 145 Wash.2d at 536, 39 P.3d 984](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002127403&pubNum=0004645&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (quoting former RCW 48.29.010(3)(c) (1997)). By contrast, “abstract of title” means  a written representation, provided under contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of this representation, listing all recorded conveyances, instruments, or documents that, under the laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described. [RCW 48.29.010(3)(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.010&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The definition of “abstract of title” expressly provides that “[a]n abstract of title is not a title policy as defined in this subsection.” *Id.*  This 1997 amendment to [RCW 48.29.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.010&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) “resolve[d] the obligations associated with a preliminary commitment and an abstract of title,” and did so in favor of the position of title insurers, who had “‘roundly den[ied] they have the abstracter’s duty,’” and “‘argue[d] that the preliminary commitment merely discloses what the policy will and will not cover, that their only legal obligation is to pay losses under the policy, and that an insured has no reasonable expectation of anything more.’” [*Barstad,* 145 Wash.2d at 536, 539, 39 P.3d 984](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002127403&pubNum=0004645&originatingDoc=If4f4eb3d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (quoting 18 William B. Stoebuck, Washington Practice; Real Estate: Transactions § 13.18, at 147(1995)). |

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2 Title Ins. Law § 18:12 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:12. Scope of business permitted, required, and prohibited—Requirement of title search and examination

Not only are title insurance companies *permitted* to search public records as part of their business, see [§ 18:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), but many states *mandate* a [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and determination of insurability before any policy may be issued. In Florida, this is accomplished by barring the issuance of title insurance on a “casualty” basis.[1](#co_footnote_I7c6cd851d6ee11ea8f41e1f6f2a) To issue title insurance on a casualty basis[2](#co_footnote_I7c6cd852d6ee11ea8f41e1f6f2a) would mean that the insurer had not based the policy on a prior search and examination of the title and had not attempted to discover or eliminate risks prior to issuing the policy.[3](#co_footnote_I7c6cd853d6ee11ea8f41e1f6f2a)

Florida and other states also statutorily mandate that no [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) may be issued without a reasonable title search, examination of title, and determination of insurability.[4](#co_footnote_I7c6cff60d6ee11ea8f41e1f6f2a) Such statutes usually further require that evidence of the reasonable examination of title and determination of insurability be retained in the title insurance company’s files for a specified period of time after the policy is issued.[5](#co_footnote_I7c6d4d83d6ee11ea8f41e1f6f2a) The same requirement exists in the Model Title Insurance Act, which was promulgated by the National Association of Insurance Commissioners.[6](#co_footnote_I7c6d4d84d6ee11ea8f41e1f6f2a) Additionally, several states go further and prohibit the issuance of any title insurance policy unless the record title has been examined by a licensed abstractor and/or attorney.[7](#co_footnote_I7c6d7490d6ee11ea8f41e1f6f2a)

The exact language of the preceding type of statute may be important when an insured suffers a loss as the result of a title defect that appears of record but is excepted from the title insurance policy’s coverage by a standard policy exclusion or exception. The New Mexico Supreme Court based a duty of title insurers to both vendors and vendees in a real estate transaction on a state statute that prohibits the writing of any title insurance policy unless the title insurer or agent has conducted a reasonable search and examination of the title and made a determination of insurability in accordance with sound underwriting practices.[8](#co_footnote_I7c6d7491d6ee11ea8f41e1f6f2a) In *Ruiz v. Garcia*, the court held that this statute imposes a duty on title insurers that is separate from the obligations they assume in the title insurance contract.[9](#co_footnote_I7c6d7492d6ee11ea8f41e1f6f2a) The court also held that this statutory duty to search is owed to both the vendor and the vendee in the real estate transaction because the statute’s stated purpose is to provide for the protection of “consumers and purchasers” of title insurance policies.[10](#co_footnote_I7c6d9ba0d6ee11ea8f41e1f6f2a) As in most residential transactions, in *Ruiz v. Garcia* the seller of the real estate was required to “purchase” the title insurance; the buyer, being the named insured, was the “consumer.”

The U.S. District Court for the Middle District of Florida applied Florida’s statute imposing on title insurance companies a duty to conduct a reasonable title search before issuing a title insurance commitment or policy as if the duty imposed is on behalf of individual insureds.[11](#co_footnote_I7c6d9ba1d6ee11ea8f41e1f6f2a) The court did not need to analyze that issue expressly, however, because it found that, having met the standard set by Florida’s Marketable Record Title Act, the particular title search was reasonable.[12](#co_footnote_I7c6d9ba2d6ee11ea8f41e1f6f2a)

Idaho law also mandates that “[n]o title insurance on real property in the state of Idaho shall be issued unless and until the title insurer or its agent: … (b) Has caused to be made a search and examination of the title and a determination of insurability of title in accordance with sound title underwriting practices.”[13](#co_footnote_I7c6d9ba3d6ee11ea8f41e1f6f2a) An insured, in *Brown’s Tie & Lumber Co. v. Chicago Title Co. of Idaho*, asserted that this language created a duty of title insurers to insureds to conduct a reasonable title search before issuing a policy.[14](#co_footnote_I7c6d9ba4d6ee11ea8f41e1f6f2a) Yet, the Idaho Supreme Court held that the omission of the word “reasonable” from that state’s statute revealed that the Idaho legislature did not intend to place a standard of reasonable care upon title insurers performing title searches.[15](#co_footnote_I7c6d9ba5d6ee11ea8f41e1f6f2a) Finding no statutory duty of the title insurer to its insured, the court ruled that the relationship between a title insurer and its insured is essentially contractual and that, therefore, the insurer could not be subject to a negligence action unless “the act complained of was a direct result of duties voluntarily assumed by the insurer in addition to the mere contract to insure title.”[16](#co_footnote_I7c6dc2b0d6ee11ea8f41e1f6f2a)

Like the New Mexico statute, a New Jersey statute also prohibits the writing of any title policy unless it is based on a “reasonable examination” of the title and a “determination of insurability made in accordance with sound underwriting principals.”[17](#co_footnote_I7c6dc2b1d6ee11ea8f41e1f6f2a) In 1989, the New Jersey Superior Court held in *Walker Rogge, Inc. v. Chelsea Title & Guar. Co.* that [N.J. Stat. Ann. § 17:46B-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-9&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) created a statutory duty of title insurers to undertake a careful title search.[18](#co_footnote_I7c6dc2b2d6ee11ea8f41e1f6f2a) The Superior Court held that this duty runs in favor of insureds, even if an insured has not specifically requested a title search or report in addition to the policy.[19](#co_footnote_I7c6dc2b3d6ee11ea8f41e1f6f2a) Yet, while noting that a legislature’s adopting such a statute reinforces the view that a title company should be liable to insureds for negligent title searches, on appeal the New Jersey Supreme Court concluded that the insured had not engaged the insurer to perform a title search.[20](#co_footnote_I7c6dc2b4d6ee11ea8f41e1f6f2a) The court reasoned that the insured had only purchased a title insurance policy and that the search the insurer performed for that purpose was merely an internal procedure to aid the company in deciding whether or not to issue a policy.[21](#co_footnote_I7c6dc2b5d6ee11ea8f41e1f6f2a) The court was not persuaded otherwise by the fact that the insured was charged $75 for “title examination.”[22](#co_footnote_I7c6de9c0d6ee11ea8f41e1f6f2a) The New Jersey Supreme Court also relied on the Idaho Supreme Court’s finding in *Brown’s Tie* that the Idaho statute did not impose on title insurers a duty running to the insured to conduct a reasonable search before issuing an insurance policy.[23](#co_footnote_I7c6de9c1d6ee11ea8f41e1f6f2a) Importantly, however, the New Jersey Supreme Court failed to mention the difference in the language of the two states’ laws. The Idaho court had emphasized the fact that the Idaho statute omitted the requirement of a “reasonable” search and reasoned that this omission revealed the legislature’s intention not to impose a standard of reasonable care upon title insurers performing a title search.[24](#co_footnote_I7c6de9c2d6ee11ea8f41e1f6f2a) Conversely, the New Jersey statute, like the New Mexico statute, does mandate a “reasonable” examination of title. Yet, the New Jersey Supreme Court concluded that the title company could only be subject to a negligence action if the title company breached a duty to search and report the status of title which it voluntarily assumed in addition to the agreement to insure title.[25](#co_footnote_I7c6de9c3d6ee11ea8f41e1f6f2a) The Supreme Court remanded the case to the trial court to determine whether the title insurer might have assumed an independent duty to search title, perhaps by separate oral contract or in its capacity as closing agent.[26](#co_footnote_I7c6de9c4d6ee11ea8f41e1f6f2a) In 2010, in *Cocco v. Hamilton*, the New Jersey Superior Court Appellate Division commented that [N.J. Stat. Ann. § 17:46B-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-9&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) sets forth title insurers “‘contractual duty … to conduct[ ] a reasonable examination of the title … in accordance with sound underwriting practices.’”[27](#co_footnote_I7c6de9c5d6ee11ea8f41e1f6f2a) This court held that a reasonable jury could have concluded that the title insurer breached its contractual duty under the statute to further examine the title by failing to inquire into certain pending litigation.

One purpose of such statutes is to assure that title insurance will not be issued on solely a casualty basis. The most singular characteristic of title insurance has been that, prior to the issuance of the policy, the title insurance company performs a search of the real property records pertaining to the interest to be insured. See *supra* [§ 1:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a15&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Insurance of land titles could have developed without title searching. However, title insurance’s outgrowth from the abstract and attorneys’ opinion methods of assuring title, combined with an insurance company’s desire to appraise the risks before insuring, resulted in both functions being assumed by the title insurance industry. If the title insurance company’s title search uncovers any encumbrances or title defects, the title insurer initially types a list of those not already subsumed within preprinted policy exclusions as special exceptions to the policy to be issued. The insurer traditionally has given that list to the applicant before closing.

While title defects that fit within the policy’s general exclusions may be omitted from this report,[28](#co_footnote_I7c6e10d1d6ee11ea8f41e1f6f2a) the list the insurer does provide gives the applicant the opportunity to cure the identified defects prior to completing the real estate transaction.[29](#co_footnote_I7c6e10d2d6ee11ea8f41e1f6f2a) Title insurance contrasts with virtually all other insurance forms because it traditionally has been structured on this concept of risk elimination and not solely on risk assumption and distribution of losses among the body of policy holders.[30](#co_footnote_I7c6e10d4d6ee11ea8f41e1f6f2a) While a few casualty coverages were added to standard [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Owner’s and Loan Policies in 2006, and a few more to the Homeowner’s policies in 2001, the title search and examination traditionally has been the main focus of title insurance, with the major portion of the title insurance premium going toward its cost.[31](#co_footnote_I7c6e10d5d6ee11ea8f41e1f6f2a)

Commentators generally agree that title insurance should not be issued on a casualty basis in the United States. As [§§ 22:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a1&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this book explains, in most of the rest of the world, examination, adjudication, and conclusive registration of titles to land is a government function. Conversely, in all but a few locations in the United States, recorders of deeds merely record copies of documents as title evidence, without making any conclusions about the status of title. The obligation to examine the evidence of title falls on each purchaser and lender. The regulations described in this section in effect impose on private title insurers a role that government officials play in the rest of the world. If title insurance in the U.S. suddenly were written on a casualty risk basis only, with no government body to take up the role of searching, examining, and determining the status of each title, there would be a gradual deterioration in the security of land titles. Elimination of the title search and examination also would remove the basis for sellers and buyers to undertake actions to cure titles, Titles would become more uncertain, losses would increase, and insurance rates would go up.[32](#co_footnote_I7c6e37e3d6ee11ea8f41e1f6f2a)

Thus, it is to ensure that the title insurance industry continues searching titles and assisting with the curing of title problems that states’ legislatures bar the issuing of title insurance on a casualty basis alone. In addition, since title insurers regularly advertise title insurance to lenders, real estate brokers, and property buyers as a substitute for the title search of an abstractor and the title opinion of an attorney, should not title insurers be legally required to fulfill those expectations?[33](#co_footnote_I7c6e37e4d6ee11ea8f41e1f6f2a)

The question remaining, however, is whether these statutes are meant to create a duty and a private cause of action in favor of insureds. The different results in the New Mexico and New Jersey cases, despite almost identical statutes, suggest that grammatical construction of the statutes is not particularly helpful. The different results could depend upon the availability of legislative history revealing legislators’ intent in adopting their “reasonable examination” statutes. The New Mexico Supreme Court based its finding that the statutory duty to search ran in favor of insureds, in part, on a statement of purpose which said the statute was intended to “provide for the protection of consumers and purchasers of title insurance policies.”[34](#co_footnote_I7c6e5ef1d6ee11ea8f41e1f6f2a) Another state with helpful legislative history is Nebraska. Nebraska’s reasonable search statute clearly shows the legislature’s intent was to protect real property purchasers. In hearings prior to the adoption of the statute, the representative of the Nebraska Land Title Association stressed that the existing law allowed the issuance of title insurance with or without examination of title, that the “reasonable examination” legislation was proposed to prohibit the writing of title insurance on a casualty basis, and that it also was intended to protect homebuyers.[35](#co_footnote_I7c6e5ef2d6ee11ea8f41e1f6f2a) Promoters of the bill also advanced the reasonable search requirement as “establishing a standard of care providing for reasonable examination of the claim of title and retention of records.”[36](#co_footnote_I7c6e5ef3d6ee11ea8f41e1f6f2a) Nevertheless, when the Nebraska Supreme Court in *Heyd v. Chicago Title Insurance* found a duty of title insurers in tort to fully examine title and disclose all record defects to title insurance applicants, this statute was not mentioned.[37](#co_footnote_I7c705ac0d6ee11ea8f41e1f6f2a) While it is possible the statute was ignored because it was never intended to protect property buyers, it is more likely that it was simply overlooked, for the legislative history clearly could have been cited as evidence that property buyers were intended to be within the [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of persons the statute was adopted to protect.

On the other hand, the statutes cited do not mention *disclosure* to insureds. It is, of course, the *disclosure of all defects in title* that buyers and mortgagees need before they can ask the seller to cure discovered title defects. Perhaps statutes that require title insurance companies to perform a reasonable search of the record, but that do not require disclosure of title defects to the insured, are merely intended to prevent the selling of title insurance on a casualty basis rather than to impose a tort duty on title insurers for the benefit of insureds. Where the state’s statutes do not expressly mention disclosure to insureds, it may be argued that title insurance applicants were not the class which those statutes were intended to protect.

The closest to mandating disclosure is a Montana statute which dictates that all “outstanding enforceable recorded liens or other interests against the property title” being insured in an owner’s policy must be “shown.”[38](#co_footnote_I7c7081d0d6ee11ea8f41e1f6f2a) The Model Title Insurance Act also would prohibit any title insurer or title agent from knowingly issuing any title insurance policy or commitment to insure without “showing all outstanding, enforceable recorded liens or other interests against the property title which is to be insured.”[39](#co_footnote_I7c7081d1d6ee11ea8f41e1f6f2a) “Showing” recorded liens and interests refers to the title company’s listing of title defects discovered as special exceptions in the policy’s Schedule B. As discussed above, this is the way that title insurers do disclose to applicants the existing defects in or encumbrances on the title being insured. This statute, therefore, must be read as having been adopted for the benefit of insureds and a cause of action should be recognized in favor of an insured in a situation where the title insurer violated the statute. Yet, because the requirement of disclosure to insurance applicants is indirect rather than express, some ambiguity exists. This leaves room for title insurers to contend that the statute merely requires them to specifically except any existing title defects that they do not intend for a policy to cover and only prohibits their relying on preprinted exclusions to except existing title defects from coverage. At a minimum, however, an insured should be able to cite a statute such as the one in the Model Act to estop the title insurer from denying coverage of a recorded lien or interest which was not listed in the policy. Additionally, in relation to both the Montana statute and all the other “reasonable search” statutes cited in this subsection, a title insurer who fails to perform a title search certainly should be estopped from asserting in defense of an insured’s claim that the policy is invalid because it was issued in violation of the statute.[40](#co_footnote_I7c7081d2d6ee11ea8f41e1f6f2a)

Ch. 12 of this book considers whether a title insurer has a duty to insureds in tort to search for and disclose all record title defects, including those that fall within standard preprinted exclusions and exceptions from the insurance policy’s coverage.

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| **Footnotes** | |
| [1](#co_fnRef_I7c6cd851d6ee11ea8f41e1f6f2aa78) | [Fla. Stat. Ann. § 627.784](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.784&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussed in [Morton v. Attorneys’ Title Ins. Fund, Inc., 32 So. 3d 68 (Fla. Dist. Ct. App. 2d Dist. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019340646&pubNum=0003926&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Fla. Stat. § 627.7845](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7845&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussed in [Kahama VI, LLC v. HJH, LLC, 2016 WL 7104175 (M.D. Fla. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2040463990&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Chicago Title Ins. Co. v. Commonwealth Forest Investments, Inc., 494 F. Supp. 2d 1332 (M.D. Fla., 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012596445&pubNum=0004637&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7c6cd852d6ee11ea8f41e1f6f2aa78) | [Fla. Stat. Ann. § 627.784](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.784&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The statute prohibits the issuance of a title insurance policy “without regard to the possible existence of adverse matters or defects of title.” |
| [3](#co_fnRef_I7c6cd853d6ee11ea8f41e1f6f2aa78) | Risk elimination is a feature that distinguishes title insurance from general insurance lines. *See* [§ 1:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a15&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7c6cff60d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-25-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-5&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“no preliminary report, commitment, binder, policy, or contract of title insurance shall be issued until and unless the title insurer or the person or agent issuing the title insurance policy on behalf of the title insurer has performed any of the following: (1) Caused to be conducted a search or examination of the title as defined in this chapter. (2) Obtained an abstract of title. (3) Obtained an opinion of title”); [Ala. Code § 27-25-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-3&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (an opinion of title is a “written expression of the status of title, including, but not limited to, the validity or invalidity thereof, based upon an examination by an attorney at law, who is licensed to practice law in this state, of instruments of public record or an abstract thereof affecting title to a specified parcel of real property to ascertain the history and present condition of title to such real property as to its ownership and status with respect to liens, encumbrances, clouds, and defects”).  [Alaska Stat. § 21.66.170](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.170&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A policy or contract of title insurance may not be written until the title insurance company conducts or has conducted a reasonable search and examination of the title and has made a determination of insurability of title in accordance with its established underwriting practices.”).  [Ariz. Rev. Stat. Ann. § 20-1567](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1567&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Colo. Rev. Stat. § 10-11-106](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-106&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Conn. Gen. Stat. § 38a-407](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-407&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Fla. Stat. Ann. § 627.7845](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7845&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Ga. Code Ann. § 33-7-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-7-8&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (providing that title insurance contracts “shall be written only upon evidence or opinion of title obtained and preserved by the insurer.”); [Cynergy, LLC v. First American Title Ins. Co., 706 F.3d 1321, 90 Fed. R. Evid. Serv. 711 (11th Cir. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029735569&pubNum=0000506&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Haw. Rev. Stat. § 431:20-113](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-113&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))  [Idaho Code § 41-2708](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Kan. Stat. Ann. § 40-235(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-235&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))  [Mo. Rev. Stat. § 381.071](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.071&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Code Regs. tit. 20, § 500-7.200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012891&cite=20MOADC500-7.200&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (before a title insurance policy is written, the title insurer or its licensed agent shall cause a search of the title which is to be insured, except: a licensed attorney is not required to base a title exam upon a set of geographically indexed records if she is personally responsible for the inspection of the best title evidence available; if a set of indexed records is not in existence for the county where the property is located, the title insurance policy shall be based upon the best title evidence available; if evidence for a title exam cannot be obtained from an indexed set of records at a reasonable charge or within a reasonable amount of time, the title insurance policy shall be based upon the best title evidence available).  [Mont. Code Ann. § 33-25-214](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-214&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Nev. Rev. Stat. § 692A.220](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.220&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [N.H. Rev. Stat. Ann. § 416-A:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a6&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [N.J. Stat. Ann. 17:46B-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-9&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cocco v. Hamilton, 2010 WL 2011003 (N.J. Super. Ct. App. Div. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022092818&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [N.M. Stat. Ann. § 59A-30-11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [N.C. Gen. Stat. § 58-26-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-1&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title opinion by attorney who has conducted or caused to be conducted a reasonable examination of title; requires title company to make a determination of insurability).  [N.D. Cent. Code § 26.1-20-05](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-05&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires attorney examination of record title evidence), N.D. Admin. Code § 26.1-20-06 (title insurer may not issue a policy unless it has secured from an authorized person the record title evidence of the title to be insured and the title evidence has been examined by a person duly admitted to the practice of law).  [Ohio Rev. Code Ann. § 3953.07](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.07&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“No policy or contract of title insurance shall be written unless it be based upon a reasonable examination of the title and a determination of insurability of title has been made in accordance with sound underwriting practices for title insurance companies.”).  [Okla. Stat. Ann. tit. 36, § 5001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5001&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (no title insurance policy may be issued except after examination of an abstract of title prepared by a bonded and licensed abstractor), [Okla. Admin. Code 365:20-3-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012805&cite=OKADC365%3a20-3-2&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (no title insurer shall issue, permit, or cause to be issued, a binder, commitment, or policy of title insurance until either the title insurance company or its authorized agent shall have obtained an opinion of a licensed attorney based upon an examination of a duly certified abstract of title prepared by a bonded and licensed abstractor).  40 Pa. Cons. Stat. § 910-7.  [Tenn. Code Ann. § 56-35-129](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-129&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Tex. Ins. Code Ann. § 2704.001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2704.001&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A title insurance policy or contract may not be written unless … (2) the policy or contract is based on an examination of title made from title evidence prepared from an abstract plant owned, or leased and operated by a title insurance agent or direct operation for the county in which the real property is located, except as provided by Section 2704.002; (3) insurability of title has been determined in accordance with sound title underwriting practices”).  [Utah Code Ann. § 31A-20-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-20-110&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Wyo. Stat. § 26-23-308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-308&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance policy may only be issued if there is adequate evidence of title by an abstractor or an attorney title opinion).  As discussed *supra* §§ [12:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a5&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [12:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a8&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [18:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), at the behest of the land title insurance industry, several state legislatures also adopted statutes which provide that title insurance commitments are not abstracts of title and that the issuance of a title commitment does not give rise to the same duties as are incurred when an abstractor issues an abstract. *See e.g.,* [Cal. Ins. Code §§ 12340.10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.10&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to[.11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [Rev. Code Wash. § 48.29.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.010&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and other state statutes and cases cited *supra* §§ [12:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a5&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [12:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a8&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [18:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7c6d4d83d6ee11ea8f41e1f6f2aa78) | [Colo. Rev. Stat. § 10-11-106](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-106&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for at least seven years after the title insurance policy is issued); [Conn. Gen. Stat. § 38a-407](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-407&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for at least 10 years after the policy has been issued); [Fla. Stat. Ann. § 627.7845](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7845&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained in insurer’s or title insurance agent’s files for at least seven years after the policy was issued); [Haw. Rev. Stat. § 431:20-113](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-113&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained in title insurer’s files for at least 15 years after the policy is issued); [Idaho Code § 41-2708](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for unspecified length of time in insurer’s or agent’s files); [Mo. Rev. Stat. § 381.071](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.071&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (preserved for 15 years after policy is issued); [Mont. Code Ann. § 33-25-214](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-214&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be preserved and retained for unspecified time); [Nev. Rev. Stat. § 692A.220](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.220&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for at least five years after policy is issued); [N.H. Rev. Stat. Ann. § 416-A:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a6&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for 20 years); [N.J. Stat. Ann. 17:46B-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-9&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for 15 years); [N.M. Stat. Ann. § 59A-30-11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for 15 years); [Ohio Rev. Code Ann. § 3953.07](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.07&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for 10 years); 40 Pa. Cons. Stat. § 910-7 (must be retained for 20 years); [Tex. Ins. Code Ann. § 2704.001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2704.001&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for 15 years); [Utah Code Ann. § 31A-20-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-20-110&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for 15 years); [Wyo. Stat. § 26-23-308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-308&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must be retained for 15 years). |
| [6](#co_fnRef_I7c6d4d84d6ee11ea8f41e1f6f2aa78) | Model Title Insurance Act, § 12:   1. A. No title insurance policy may be written unless and until the title insurer or its title agent has caused to be conducted a reasonable search and examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices. Evidence of the examination of title and determination of insurability shall be preserved and retained in the files of the title insurer or its title agent for a period of not less than 15 years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title agent may, in the regular course of business, establish a system where by all or part of the evidence is recorded, copied, or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original. This subsection shall not apply to: 2. 1. a title insurer assuming liability through a contract of reinsurance; or 3. 2. a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with this section.   Title insurers, like all other insurance lines, are regulated by the various insurance departments. These regulators have a trade association, the National Association of Insurance Commissioners (NAIC), that assists the state insurance regulatory officials in maintaining and improving state regulation of insurance, maintaining reliability and financial solidity of insurance institutions; and in the fair and equitable treatment of policyholders and claimants. McCarthy, NAIC: Sharpening the Focus on the Title Industry, 72 Title News 11 (March/April 1993). In furtherance of these goals, the NAIC sets up committees, task forces, and working groups that study specific issues and sometimes promulgate model laws, regulations, and guidelines. The Special Insurance Issues Committee is given the responsibility for problems relating to miscellaneous lines of insurance, including title insurance. To encourage greater consistency among the states, the NAIC offers accreditation only to states that have adopted NAIC model acts with language at least as strict as the model and have put in place the personnel, budget, and regulatory authority to enforce the adopted model. McCarthy, NAIC: Sharpening the Focus on the Title Industry, 72 Title News 11, 12 (March/April 1993). |
| [7](#co_fnRef_I7c6d7490d6ee11ea8f41e1f6f2aa78) | [N.C. Gen. Stat. § 58-26-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-1&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.D. Cent. Code § 26.1-20-05](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-05&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-308&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [36 Okla. Stat. Ann. § 5001(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5001&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (construed in [American Title Ins. Co. v. M-H Enterprises, 1991 OK CIV APP 58, 815 P.2d 1219 (Ct. App. Div. 3 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991160829&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and 10 Op. Okla. Att’y Gen. 425 (1978) & 83 Opin. Okla. Att’y Gen. 281 (1984). |
| [8](#co_fnRef_I7c6d7491d6ee11ea8f41e1f6f2aa78) | *See* [Ruiz v. Garcia, 115 N.M. 269, 850 P.2d 972, 975–977 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993087967&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_975&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_975); [Cottonwood Enterprises v. McAlpin, 111 N.M. 793, 810 P.2d 812, 815 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991086794&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_815&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_815). *Compare* [Cynergy, LLC v. First American Title Ins. Co., 706 F.3d 1321, 1328–1329, 90 Fed. R. Evid. Serv. 711 (11th Cir. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029735569&pubNum=0000506&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1328&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1328) (holding that statute providing that title insurance contracts “shall be written only upon evidence or opinion of title obtained and preserved by the insurer” was satisfied by agent’s supplying evidence of title). |
| [9](#co_fnRef_I7c6d7492d6ee11ea8f41e1f6f2aa78) | [Ruiz v. Garcia, 115 N.M. 269, 850 P.2d 972, 976–977 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993087967&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_976&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_976) (citations omitted):  So, even though New Mexico Title had no express contractual duty to perform a title search for Garcia [the vendor] and did not undertake to act in any capacity for Garcia other than as a closing agent in a real estate transaction, it nevertheless had a statutory duty to Garcia independent of any contract. Thus, we reject New Mexico Title’s argument, based upon [*Horn*, 89 N.M. at 711, 557 P.2d at 208](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976134679&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_208&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_208), that if it had no contractual obligation to conduct a search for Garcia, any search undertaken was for its own benefit. We hold that New Mexico Title owed a duty of reasonable care to Garcia under [section 59A-30-11(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and that its failure to discover a defect of title is actionable for her.  In a footnote, the court stated:  We do not overrule *Horn* because the plaintiff’s claim in that case was breach of contract, and we found that there was no contract to perform a search for the contested items. The enactment of [section 59A-30-11(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-11&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in 1985 and our opinion in *Cottonwood* do modify *Horn* insofar as it held that a title company is under no duty to perform a title search unless contractually obligated to do so. Our holding in *Cottonwood* regarding that statutory duty to perform a title search whenever issuing a title policy, however, overrules *Devlin* and *Roscoe* insofar as they interpreted *Horn* as holding that no tort duty existed in the absence of a contractual duty to search the records under the title insurance contract. See [*Roscoe*, … 734 P.2d at 1274](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987046400&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1274&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1274); [*Devlin*, 641 P.2d at 1100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982111309&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1100&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1100).  [Ruiz v. Garcia, 115 N.M. 269, 850 P.2d 972, 976 n.3 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993087967&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_976&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_976). *See also* [Cocco v. Hamilton, 2010 WL 2011003, \*11 (N.J. Super. Ct. App. Div. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022092818&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7c6d9ba0d6ee11ea8f41e1f6f2aa78) | [Ruiz v. Garcia, 115 N.M. 269, 850 P.2d 972, 976 n.3 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993087967&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_976&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_976). |
| [11](#co_fnRef_I7c6d9ba1d6ee11ea8f41e1f6f2aa78) | [Kahama VI, LLC v. HJH, LLC, 2016 WL 7104175, \*7-8 (M.D. Fla. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2040463990&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *quoting* [Fla. Stat. § 627.7845(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7845&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I7c6d9ba2d6ee11ea8f41e1f6f2aa78) | [Kahama VI, LLC v. HJH, LLC, 2016 WL 7104175 (M.D. Fla. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2040463990&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I7c6d9ba3d6ee11ea8f41e1f6f2aa78) | [Idaho Code § 41-2708(1)(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I7c6d9ba4d6ee11ea8f41e1f6f2aa78) | [Brown’s Tie & Lumber Co. v. Chicago Title Co. of Idaho, 115 Idaho 56, 764 P.2d 423, 427 (1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988141799&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_427). |
| [15](#co_fnRef_I7c6d9ba5d6ee11ea8f41e1f6f2aa78) | [Brown’s Tie & Lumber Co. v. Chicago Title Co. of Idaho, 115 Idaho 56, 764 P.2d 423, 427 (1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988141799&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_427). |
| [16](#co_fnRef_I7c6dc2b0d6ee11ea8f41e1f6f2aa78) | [Brown’s Tie & Lumber Co. v. Chicago Title Co. of Idaho, 115 Idaho 56, 764 P.2d 423, 426 (1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988141799&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_426&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_426). |
| [17](#co_fnRef_I7c6dc2b1d6ee11ea8f41e1f6f2aa78) | [N.J. Stat. Ann. § 17:46B-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-9&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I7c6dc2b2d6ee11ea8f41e1f6f2aa78) | *See* [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 222 N.J. Super. 363, 536 A.2d 1309, 1314 (App. Div. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988025257&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1314&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1314), judgment aff’d in part, rev’d in part, [116 N.J. 517, 562 A.2d 208 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Cocco v. Hamilton, 2010 WL 2011003, \*11 (N.J. Super. Ct. App. Div. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022092818&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), distinguishing *Walker Rogge* and holding that a title insurer has a “contractual duty, as set forth in [N.J. Stat. Ann. § 17:46B-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-9&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), to ‘conduct[ ] a reasonable examination of the title … in accordance with sound underwriting practices.’” |
| [19](#co_fnRef_I7c6dc2b3d6ee11ea8f41e1f6f2aa78) | [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 222 N.J. Super. 363, 536 A.2d 1309, 1314 (App. Div. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988025257&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1314&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1314), judgment aff’d in part, rev’d in part, [116 N.J. 517, 562 A.2d 208 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I7c6dc2b4d6ee11ea8f41e1f6f2aa78) | [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 562 A.2d 208, 218 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_218&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_218). |
| [21](#co_fnRef_I7c6dc2b5d6ee11ea8f41e1f6f2aa78) | [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 562 A.2d 208, 218 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_218&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_218).  Although we recognize that an insured expects that a title company will conduct a reasonable title examination, the relationship between the company and the insured is essentially contractual…. If the title company fails to conduct a reasonable title examination or, having conducted such an examination, fails to disclose the results to the insured, then it runs the risk of liability under the policy.  [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 562 A.2d 208, 220 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_220&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_220).  The expectation of the insured that the insurer will conduct a reasonable search does not necessarily mean that the insurer may not limit its liability in the title commitment and policy. If the company may not so limit its liability, then it would be exposed to consequential damages resulting from its negligence. Under general contract principles, however, consequential damages are not recoverable unless they were within the specific contemplation of the parties.  [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 562 A.2d 208, 220 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_220&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_220). *See also* [N.J. Stat. Ann. 17:46B-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-9&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Another New Jersey statute defines title insurance as including the “guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property” and further defines the business of title insurance as “including abstracting (and) examination of title.” N.J. Stat. Ann. 17:46B-1a, 17:46B-1b. |
| [22](#co_fnRef_I7c6de9c0d6ee11ea8f41e1f6f2aa78) | [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 562 A.2d 208, 218 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_218&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_218). |
| [23](#co_fnRef_I7c6de9c1d6ee11ea8f41e1f6f2aa78) | [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 562 A.2d 208, 221 (1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_221&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_221) (hereafter Rogge). *Accord* [Chicago Title Ins. Co. v. Commonwealth Forest Investments, Inc., 494 F. Supp. 2d 1332 (M.D. Fla., 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012596445&pubNum=0004637&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (had legislature intended to create a private cause of action for deficient title search under [Fla. Stat. § 627.7845](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7845&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), it would have done so expressly); [Chapman v. Uintah County, 2003 UT App 383, 81 P.3d 761 (Utah Ct. App. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003836219&pubNum=0004645&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (concluding that Utah’s statute imposed a duty on title insurers to perform a reasonable search and examination for purposes of determining insurability of the title but not a duty to abstract titles). |
| [24](#co_fnRef_I7c6de9c2d6ee11ea8f41e1f6f2aa78) | [Brown’s Tie & Lumber Co. v. Chicago Title Co. of Idaho, 115 Idaho 56, 764 P.2d 423, 427 (1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988141799&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_427). |
| [25](#co_fnRef_I7c6de9c3d6ee11ea8f41e1f6f2aa78) | [Rogge, 562 A.2d at 221](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_221&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_221). *See also* [Cocco v. Hamilton, 2010 WL 2011003, \*11 (N.J. Super. Ct. App. Div. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022092818&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), holding that a reasonable jury could conclude that the title agent voluntarily assumed a duty that was subject to negligence principles when the title agent made assurances about who did and did not need to be present at closing. |
| [26](#co_fnRef_I7c6de9c4d6ee11ea8f41e1f6f2aa78) | [Rogge, 562 A.2d at 221](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989119110&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_221&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_221). For outcome on remand, *see* [Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 254 N.J. Super. 380, 603 A.2d 557 (App. Div. 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992066190&pubNum=0000162&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [27](#co_fnRef_I7c6de9c5d6ee11ea8f41e1f6f2aa78) | [Cocco v. Hamilton, 2010 WL 2011003, \*11 (N.J. Super. Ct. App. Div. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022092818&pubNum=0000999&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [28](#co_fnRef_I7c6e10d1d6ee11ea8f41e1f6f2aa78) | *See* Chs. 6 and 7 regarding standard exclusions and exceptions from policy coverage. |
| [29](#co_fnRef_I7c6e10d2d6ee11ea8f41e1f6f2aa78) | Issues involving the adequacy of this disclosure are discussed more fully in [§§ 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) It should be mentioned at this point that the insurer may not have a contractual or fiduciary duty to explain the import of any excepted or excluded defects to the insured. It is up to the applicant or the applicant’s attorney to approach the title insurer with any questions regarding title defects listed as exceptions. The title insurer may then advise the applicant as to what curative measures the title insurer deems sufficient to correct the title defect. |
| [30](#co_fnRef_I7c6e10d4d6ee11ea8f41e1f6f2aa78) | *See* [Lawyers Title Ins. Corp. v. Research Loan & Inv. Corp., 361 F.2d 764, 767 (8th Cir. 1966)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1966121378&pubNum=0000350&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_767&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_767) (“title insurance is more than a contract of indemnity. Usually, the very purpose and essence of the title insurance transaction is to obtain a professional title search, opinion, and guarantee”). |
| [31](#co_fnRef_I7c6e10d5d6ee11ea8f41e1f6f2aa78) | Some title insurers attempted to make an exception to this traditional practice during the real estate boom of the 2000s. To meet lenders’ demands for faster issuance of title insurance and to compete with private mortgage insurers and others who were willing to issue “lien protection insurance” (*see infra* [§ 1:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a7&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) & [§ 22:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a7&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) on a casualty basis, title insurers would issue a master policy to a major lender and allow the lender’s employees to add HELOC liens as they were made to the list of liens insured. The *lender’s* employee was supposed to check the “title” by examining the borrower’s credit report and loan application for potential judgments or other liens that could be prior to the HELOC lien, and by interviewing the borrower for explanation of any facts raising the potential for a lien or title problem. Thousands more claims were made on these policies than title insurers expected. In Bank of America v. United General and First American Title Insurance Company, 10-CVS-5415, Complaint, (filed Mar. 5, 2010 N.Car.), Bank of America sued First American for not paying under such title insurance. First American countered that Bank of America breached its agreement because (a) only the highest quality loans were to have been insured with this sort of “title” examination and (b) the Bank’s employees could reasonably have known of the liens and title problems that arose, but failed to diligently examine credit reports or interview borrowers. First American also asserted that the fall in market values left insufficient equity in most of the properties to cover the first mortgages, much less Bank of America’s insured HELOC loans, and Bank of America, therefore, sustained no additional loss from the title defect. Bank of America v. United General and First American Title Insurance Company, 10-CVS-5415, Answer, Counterclaim and Third Party Complaint of United General Title Insurance Company and First American Title Insurance Company (filed Apr. 1, 2010 N.Car.). |
| [32](#co_fnRef_I7c6e37e3d6ee11ea8f41e1f6f2aa78) | Johnstone, [Title Insurance, 66 Yale L.J. 492, 516 (1957)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0332817042&pubNum=0001292&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_1292_516&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1292_516).  *See also* Roberts, et al., Public Regulation of Title Insurance Companies and Abstracters, at 5: “Title insurance is not based on mere guesswork as are fire insurance or automobile insurance. It instead is based on reports evaluating the risk which are prepared by skilled technicians.” |
| [33](#co_fnRef_I7c6e37e4d6ee11ea8f41e1f6f2aa78) | *See infra* [§ 1:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a13&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§§ 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [34](#co_fnRef_I7c6e5ef1d6ee11ea8f41e1f6f2aa78) | [Ruiz v. Garcia, 115 N.M. 269, 850 P.2d 972, 975 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993087967&pubNum=0000661&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_975&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_975). Rather than protecting purchasers of insurance, the court in [Chicago Title Ins. Co. v. Commonwealth Forest Investments, Inc., 494 F. Supp. 2d 1332, 1338 (M.D. Fla. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012596445&pubNum=0004637&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1338&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1338) concluded that the Florida legislature’s goal was advancing the stability of the title insurance industry:  Further, the Court concludes that [§ 627.7845, Fla. Stat](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7845&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))., does not provide for a statutory cause of action for deficient title search. [Section 627.7845](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7845&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) is regulatory in nature. Had the Florida legislature intended to create a private cause of action under this statute, it would have done so expressly, as it did with other sections of the insurance code. *See* [Fla. Stat. § 624.155](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.155&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Moreover, exposing title insurance companies to liability in excess of the policy limits is contrary to the legislature’s goal in § 627.778(l)(a) of furthering the stability and viability of the title insurance industry by requiring title insurance policies to state the dollar amount of risk assumed and limiting such risk to one-half of the insurer’s surplus. |
| [35](#co_fnRef_I7c6e5ef2d6ee11ea8f41e1f6f2aa78) | Title Insurance Bill: Hearing on LB 611 Before the Comm. on Banking, Commerce & Insurance, Nebraska Unicameral, 77th Sess. 11 (Apr. 5, 1967) (statement by Mr. Sam Jensen, Attorney for the Nebraska Land Title Ass’n) [hereinafter Hearing]. [O]ur legislation requires that there be reasonable examination of title. We set up a standard of care, whereby a title must be searched, our records must be kept for 15 years, and this all must be done … with the recognized standards of underwriting in the national title insurance industry…. [W]e are not going to have a situation where you will write this on a casualty basis. We want to get away from this, because we think … that if you have a home and you lose your home, certainly that insurance company is there to make good the financial loss, but most people always, I know I personally, think this is my home where I’ve lived for a period of time I’ve worked on, this home is worth much more to me than the replacement value in dollars, so what you get when you get title insurance, you get the thing that you buy from an attorney and from an abstractor. …  Hearing, at 11.  Of course, another class intended to be protected by statutes mandating a reasonable title search and examination was the traditional title insurance companies already operating in the state. |
| [36](#co_fnRef_I7c6e5ef3d6ee11ea8f41e1f6f2aa78) | Introducer’s Statement of Purpose: LB 611 by Sen. Payne 2 (Apr. 5, 1967). |
| [37](#co_fnRef_I7c705ac0d6ee11ea8f41e1f6f2aa78) | [Heyd v. Chicago Title Ins. Co., 218 Neb. 296, 303, 354 N.W.2d 154, 158 (1984)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1984139211&pubNum=0000595&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_158&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_158). |
| [38](#co_fnRef_I7c7081d0d6ee11ea8f41e1f6f2aa78) | [Mont. Code Ann. § 33-25-214(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-214&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [39](#co_fnRef_I7c7081d1d6ee11ea8f41e1f6f2aa78) | NAIC, Model Title Insurance Act, § 12B. *See also* [Haw. Rev. Stat. § 431:20-113(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-113&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Ann. Stat. § 381.071](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.071&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-308&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [40](#co_fnRef_I7c7081d2d6ee11ea8f41e1f6f2aa78) | This is stated expressly in some states’ statutes. *See, e.g.,* [Mont. Code Ann. § 33-25-214(4)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-214&originatingDoc=If4f4eb406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:13 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:13. Scope of business permitted, required, and prohibited—Banking and guaranteeing of mortgages and bonds

Though title insurers began primarily as divisions of banks and mortgage companies,[1](#co_footnote_I7c795b70d6ee11ea8f41e1f6f2a) today title insurance companies are not permitted to make mortgage loans or otherwise conduct banking business.[2](#co_footnote_I7c795b72d6ee11ea8f41e1f6f2a) A few states do grandfather companies and permit them to continue engaging in both the businesses of insurance and banking if they were formed for both those purposes before state laws were passed, prohibiting one company from engaging in both the businesses of banking and insurance. The reverse also is true. Ch. 3 examines federal and state laws that restrict banks and [**bank holding companies**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a12b9ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) from acting as or owning title insurance companies.[3](#co_footnote_I7c798280d6ee11ea8f41e1f6f2a)

Most states also specifically prohibit title insurers from selling mortgage guarantee insurance—i.e., insuring “the payment of the principal or interest of bonds, notes or other obligations.”[4](#co_footnote_I7c798281d6ee11ea8f41e1f6f2a) Other states expressly permit title insurers to sell mortgage guarantee insurance but only if the insurer segregates reserves for the payment of claims from this line of insurance from its reserves for the satisfaction of claims from title insurance or meets other criteria.[5](#co_footnote_I7c798282d6ee11ea8f41e1f6f2a) Conversely, in two states, title insurance companies’ activities may extend to the guaranteeing payment of mortgage loans.[6](#co_footnote_I7c798283d6ee11ea8f41e1f6f2a) Sections [1:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a7&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [18:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a3&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [22:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a7&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discuss cases enforcing states’ prohibitions against one insurer issuing both mortgage insurance and title insurance.

Three states expressly empower title insurers to insure the “identity, due execution and validity” of notes and mortgages.[7](#co_footnote_I7c79a993d6ee11ea8f41e1f6f2a) This is not to be confused with insuring the payment of mortgages; in fact, this is a risk generally covered by standard lenders’ title insurance policies. See [§§ 5:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a1&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

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| **Footnotes** | |
| [1](#co_fnRef_I7c795b70d6ee11ea8f41e1f6f2aa78) | *See* [§§ 3:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a1&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [2](#co_fnRef_I7c795b72d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Tenn. Code Ann. § 56-35-104](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-104&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7c798280d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Del. Code Ann. tit. 5, § 761](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT5S761&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (banks and trust companies may not act as title insurers and may not transact title insurance); [N.J. Rev. Stat. § 17:46B-30.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-30.1&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Except for a State or federally chartered bank, savings bank, savings and loan association or its subsidiary or any officer or employee of any of the foregoing, no other lending institution, mortgage service, mortgage brokerage or mortgage guaranty company or service company …” may act as insurance producers for title insurance companies), § 17:9A-27.2 (banks which, prior to 1948, insured titles may continue to insure titles); 40 Pa. Cons. Stat. § 910-11 (title insurance companies that possess powers to engage in the banking business … shall make no further contracts or issue any policies of title insurance); [Ga. Code Ann. § 33-3-23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-3-23&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (no lending institutions, bank holding companies, or subsidiaries thereof that were not in the business of selling title insurance on or before April 1, 2000, shall be permitted to sell title insurance).  *But see* [Tenn. Code Ann. § 45-2-1002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS45-2-1002&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (a bank acting in a fiduciary capacity may act as an insurer of titles); [Mich. Comp. Laws Ann. § 487.14101(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST487.14101&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (banks may “engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956 … and to own an insurance agency in whole or in part as provided under that act”). |
| [4](#co_fnRef_I7c798281d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.190(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.190&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1565(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1565&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-108(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-108&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2708(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.22-040](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-040&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-213(2, 3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-213&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.110(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.110&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:8(I)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a8&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-11&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.09](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.09&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Consol. Stat. Ann. § 910-9; [Tenn. Code Ann. § 56-35-104](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-104&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7c798282d6ee11ea8f41e1f6f2aa78) | *See* [Ky. Rev. Stat. Ann. § 304.22-040](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-040&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (insurer shall not guarantee obligations executed by others except in connection with the handling of litigation relating to losses or claims or with the settlement of such losses or claims, or if such guarantee is specifically approved by the executive director). |
| [6](#co_fnRef_I7c798283d6ee11ea8f41e1f6f2aa78) | [Kan. Stat. Ann. § 40-1102(g) to (h)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-1102&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mass. Ann. Laws ch. 175, § 47(11)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S47&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7c79a993d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12390](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12390&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-105](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-105&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Vt. Stat. Ann. tit. 8, § 3301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000883&cite=VT8S3301&originatingDoc=If4f4eb436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:14 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:14. Scope of business permitted, required, and prohibited—Escrow and trust powers

Most states grant title insurance companies the power to serve as escrow agents.[1](#co_footnote_I7c84cd20d6ee11ea8f41e1f6f2a) Many states more broadly authorize title insurers and title agents to provide escrow, closing, and settlement services.[2](#co_footnote_I7c84cd21d6ee11ea8f41e1f6f2a) Additionally, in a few states, title insurance companies are given the power to perform as trust companies.[3](#co_footnote_I7c84f431d6ee11ea8f41e1f6f2a)

Florida statutes specify that attorneys who serve as title agents must maintain any funds received for title and real estate closings in an escrow account that is separate from accounts or funds related to the attorney’s law practice. Attorneys who are title agents must permit title insurers whose policies they issue to audit this escrow account.[4](#co_footnote_I7c84f432d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7c84cd20d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.180](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.180&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. §§ 20-1562](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1562&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [20-1565](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1565&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7304&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurers may issue title insurance; make, execute, and perfect contracts, agreements, policies, and other instruments as may be required therefor; examine titles; issue commitments for title insurance policies specifying requirements; and act as escrow agent); [Nev. Rev. Stat. § 92A.110(1)(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST92A.110&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. 17:46B-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-10&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:46B-10.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-10.1&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 731.450](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.450&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. Ann. § 910-39.1; [Tenn. Code Ann. § 56-35-103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-103&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2552.051(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2552.051&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7c84cd21d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.180](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.180&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12340.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.3&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (business of title insurance includes issuing policies, transacting matters subsequent to the execution of a title policy and arising out of such policy, and performing any service in conjunction with the contemplated issuance of a title policy including handling escrows and closings); [Del. Code Ann. tit. 18, § 4904](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S4904&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. §§ 626.8473](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8473&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [627.7711(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.7711&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [628.151](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS628.151&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code Ann. §§ 30-901](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS30-901&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-2704](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2704&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-2828](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2828&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (making title certificates, policies, preliminary reports, handling escrows and closings, and transacting any phase of title insurance including matters subsequent to the issuance of such policy); [Me. Rev. Stat. Ann. tit. 24-A, § 3311](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS3311&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7304&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-201&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. §§ 692A.022](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.022&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.100&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.110&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [693A.030](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST693A.030&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (engage in title insurance business, conduct escrows and closings, and provide “any other service related or incidental to the sale and transfer of property” if the insurance commissioner has not disapproved the service); [N.M. Stat. Ann. § 59A-34-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-34-3&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.23&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agent may handle escrows connected with title insurance); [Utah Code Ann. §§ 31A-4-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-4-107&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [31A-23a-406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23A-406&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. §§ 26-23-314](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-314&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-24-103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-24-103&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-24-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-24-108&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  Whether closing real estate transactions can leave a title insurance company vulnerable to a charge of the unauthorized practice of law is considered at [§ 13:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a12&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). To the extent that closing and escrow services involve merely filling in blanks of a closing statement or statement of escrow instructions, courts are less likely to find that legal education and legal judgment are involved. However, if escrow or closing services involve creating documents such as mortgages and deeds, many courts will find that the title company has moved into the practice of law and outside of activities incidental to the business of title insurance. |
| [3](#co_fnRef_I7c84f431d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.250](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.250&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.051(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.051&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7c84f432d6ee11ea8f41e1f6f2aa78) | [Fla. Stat. Ann. § 626.8473 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.8473&originatingDoc=If4f512216fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:15 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:15. Scope of business permitted, required, and prohibited—Closing protection letters

Some states regulate “closing protection letters,” also called “insured closing letters,” and limit their issuance or their terms. Closing protection letters are examined at §§ [5:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a12&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [20:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a15&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The principal objection given is that their issuance is in the nature of fidelity or surety coverage.[1](#co_footnote_I7c94f9c1d6ee11ea8f41e1f6f2a) In several states, including New Hampshire, Vermont, Virginia,[2](#co_footnote_I7c9520d0d6ee11ea8f41e1f6f2a) and Wisconsin, the letter cannot protect against the agent’s fraud or dishonesty.[3](#co_footnote_I7c9520d1d6ee11ea8f41e1f6f2a) Nebraska restricts closing protection letters to indemnifying against the closing agent’s theft of settlement funds and failure to comply with written closing instructions.[4](#co_footnote_I7c9520d2d6ee11ea8f41e1f6f2a) Letters in those states will be more restrictive than the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) standard letter which covers generally a closing agent’s dishonesty with funds, as discussed below. In New York, closing protection letters are not available because they are considered to violate the single insurance line limitations that state statutes impose on title insurers.[5](#co_footnote_I7c9520d3d6ee11ea8f41e1f6f2a) Washington expressly limits title insurance underwriters to issuing such letters only when the title company or attorney is issuing a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) in the transaction.[6](#co_footnote_I7c9520d5d6ee11ea8f41e1f6f2a) Conversely, the legislatures in Florida,[7](#co_footnote_I7c9520d6d6ee11ea8f41e1f6f2a) Connecticut,[8](#co_footnote_I7c9547e0d6ee11ea8f41e1f6f2a) and California[9](#co_footnote_I7c9547e1d6ee11ea8f41e1f6f2a) and the judiciary in Illinois[10](#co_footnote_I7c9547e2d6ee11ea8f41e1f6f2a) and New Jersey[11](#co_footnote_I7c9547e3d6ee11ea8f41e1f6f2a) have determined that issuance of closing protection letters does not violate single insurance line limitations and expressly permit title insurers to issue them.

The Kansas Commissioner of Insurance in 1989 had prohibited the issuance of closing protection letters in Kansas on the basis that they constituted surety or fidelity coverage.[12](#co_footnote_I7c9547e4d6ee11ea8f41e1f6f2a) However, in 1996, the Kansas Commissioner reexamined its position in the context of the Kansas Supreme Court’s holding in *Ford v. Guarantee Abstract & Title Co., Inc.*[13](#co_footnote_I7c9547e5d6ee11ea8f41e1f6f2a) that a title company’s failure to use due care in closing a real estate transaction was negligence.[14](#co_footnote_I7c9547e6d6ee11ea8f41e1f6f2a) Because the court’s holding suggested that the closing protection letter’s coverage is of negligence, rather than surety or fidelity coverage, the Commissioner announced that title insurers could issue closing protection letters at their option.

Florida does mandate approval by the Department of Insurance of the form and content of the closing protection letters issued in the state. Texas[15](#co_footnote_I7c9547e7d6ee11ea8f41e1f6f2a) and New Mexico similarly require the use of one approved form. Pennsylvania’s Department of Insurance also has approved one particular “closing service letter,” which is the only form that may be issued in the state after October 1, 2000.[16](#co_footnote_I7c9547e8d6ee11ea8f41e1f6f2a) Pennsylvania also prohibits “blanket” letters, requiring a new letter issued for each transaction instead.[17](#co_footnote_I7c956ef0d6ee11ea8f41e1f6f2a)

Arizona and Ohio require the title insurance agent in any real estate transaction to disclose the availability of closing protection letters to the purchaser, seller, and lender,[18](#co_footnote_I7c956ef1d6ee11ea8f41e1f6f2a) although in Arizona, this applies only in residential real estate transactions where the title insurance agent also serves as escrow agent. If an Arizona agent fails to make the required disclosure, the title insurer must reimburse the seller or purchaser for any escrow monies lost to the same extent they would have been reimbursed under the insurer’s standard closing protection letter.[19](#co_footnote_I7c956ef2d6ee11ea8f41e1f6f2a) While Arizona’s statute requires disclosure to sellers, this does not necessarily mean that closing protection letters are available to sellers. The Arizona statute limits the title insurer’s obligation to what is standard in that insurer’s closing protection letters. If the insurer’s standard closing protection letters run in favor of only the borrower, mortgagee, and mortgagee’s assigns, as do the American Land Title Association standard closing protection letters discussed *infra* §§ 20:15 to 20:20, the insurer seemingly is not required to issue a closing protection letter to the seller in the transaction, even if asked. As discussed *supra*, insurance regulators in some states may object to issuing a closing protection letter to a seller on grounds that, since the seller is not acquiring title insurance in the transaction, closing protection coverage for the seller would be fidelity or surety insurance.

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| **Footnotes** | |
| [1](#co_fnRef_I7c94f9c1d6ee11ea8f41e1f6f2aa78) | Ironically, in two cases, it was the title insurer who argued its closing protection letters could not be enforced because they have no license to issue fidelity insurance:  Commonwealth further contends that it would not have been able to insure against the risk of attorney defalcation for several reasons. It argues that such coverage would be in the nature of fidelity insurance and, as such, prohibited under the Title Insurance Act. [N.J.S.A. 17:46B-1(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-1&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) defines title insurance as: insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title to said property. … Title-insurance companies regularly offer protection to institutional lenders against attorney theft of closing funds intended to pay off a preexisting mortgage, and as earlier noted, Transamerica offers such protection to borrowers as well. The protection against the risk of loss caused by attorney defalcation under the circumstances clearly is an incident to the issuance of title insurance. Commonwealth cannot now claim that such coverage is impermissible when the Commissioner of Insurance approved Transamerica’s insurance coverage and, in fact, refused to allow the company to delete the coverage to borrowers because it would reduce the protection offered its clients.  [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 81 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_81&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_81). *See also* [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7c9520d0d6ee11ea8f41e1f6f2aa78) | Virginia limits such letters’ coverage to closing agents’ failure to follow instructions regarding the disbursement of funds necessary to establish the addressee’s interest in real estate. *See* Administrative Letter 1995-8 from Steven T. Foster, Commissioner of Insurance, to All Companies Licensed to Write Title Insurance in Virginia (dated Sept. 4, 1995). |
| [3](#co_fnRef_I7c9520d1d6ee11ea8f41e1f6f2aa78) | *See* N.H. Ins. Bulletin (July 7, 1997); Vermont. Ins. Div. Bulletin 108 (1-10/96); VA State Corporation Commission Bureau of Insurance Administrative Letter 1995-8; Notice from Wisconsin Dept. of Ins. (Jan. 3, 1990). |
| [4](#co_fnRef_I7c9520d2d6ee11ea8f41e1f6f2aa78) | [Neb. Rev. Stat. § 44-1984(2)(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1984&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Such closing or settlement protection shall conform to the terms of [title insurance] coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer’s named title insurance agent: (i) Theft of settlement funds; and (ii) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage”). |
| [5](#co_fnRef_I7c9520d3d6ee11ea8f41e1f6f2aa78) | Circular Letter No. 18, New York Ins. Dept. (1992), concluding that title insurers may not issue closing protection letters to lenders for losses caused by the improper acts or omissions of the lender’s attorney because such protection is in the nature of fidelity and surety coverage and falls beyond the scope of the title insurer’s license. The department concluded, however, that a “title insurer is not precluded … from issuing an appropriate agent authorization letter, confined to the title insurer’s liability as principal for the acts of its agent within the scope of that agent’s authority on the title insurer’s behalf.” With regard to a letter issued to an attorney who is representing the lender and is also an approved attorney of the insurer, the department stated that whether a closing protection letter is unauthorized isn’t clear. In this context, if the letter diverges from the policy, such letter would be unauthorized. *See also* statutes cited at [§ 18:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a10&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7c9520d5d6ee11ea8f41e1f6f2aa78) | Letter from Ms. Melodie Bankers, Deputy Commissioner, Office of Insurance Commissioner (May 5, 1989) to Mr. Dennis Sherman, President, Washington Land Title Association. |
| [7](#co_fnRef_I7c9520d6d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-14-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-14-8&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. §§ 21.42.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.120&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.42.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.130&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-79-109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-79-109&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-421](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-421&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and Conn. Bull. T-1-90, T-2-90 (require filing and approval of forms—if title insurer will be using a new or revised form, the insurer must file a copy of the proposed forms and endorsements with an explanation of the reasons for and effect of any coverage changes from existing forms); [Fla. Stat. Ann. § 627.777](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.777&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A title insurer may not issue or agree to issue any form of title insurance binder, title insurance commitment, preliminary report, title insurance policy, or other contract of title insurance or related form until it is filed with and approved by the office …. The office shall approve or disapprove a form filed for approval within 180 days after receipt.”); [Ga. Code Ann. § 33-24-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-24-9&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code Ann. § 41-2705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2705&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Iowa Code § 16.91](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires forms used by Iowa title guaranty division for title guaranty program to be approved by the guaranty division board); Md. Ins. Code Ann. § 11-206; [Mich. Comp. Laws Ann. § 500.7301(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7301&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1998](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1998&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.120&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. 17:46B-25](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-25&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:46B-54](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-54&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Admin. Code Tit. 11, Rule 10.1201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003805&cite=11NCADC10.1201&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires filing and approval of forms); [S.D. Codified Laws Ann. §§ 58-25-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-8&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [58-25-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-10&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires filing and written approval or disapproval of forms, but if the director does not approve or disapprove the forms within 15 days (30 days if the period is extended), the form is deemed approved). |
| [8](#co_fnRef_I7c9547e0d6ee11ea8f41e1f6f2aa78) | [Conn. Gen. Stat. Ann. § 38a-404](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-404&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7c9547e1d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12340.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.3&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7c9547e2d6ee11ea8f41e1f6f2aa78) | *Cf.* [Lawyers Title Ins. Corp. v. Dearborn Title Corp., 993 F. Supp. 1159, 1160 (N.D. Ill. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998057268&pubNum=0000345&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1160&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1160) (suggesting that closing protection letters do not violate the Illinois Title Insurance Act). |
| [11](#co_fnRef_I7c9547e3d6ee11ea8f41e1f6f2aa78) | *See* [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I7c9547e4d6ee11ea8f41e1f6f2aa78) | Kansas Ins. Dept. Bulletin No. 1989-30 (Dec. 1, 1989). |
| [13](#co_fnRef_I7c9547e5d6ee11ea8f41e1f6f2aa78) | [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I7c9547e6d6ee11ea8f41e1f6f2aa78) | Kansas Ins. Dept. Bulletin No. 1996-6 (June 4, 1996), rescinding Bulletin No. 1989-30. |
| [15](#co_fnRef_I7c9547e7d6ee11ea8f41e1f6f2aa78) | [Tex. Ins. Code, art. 9.49](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINART9.49&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I7c9547e8d6ee11ea8f41e1f6f2aa78) | Hart, ed., Title Law Associates Newsletter Vol, 1 No. 4, p. 3 (Fall 2000). |
| [17](#co_fnRef_I7c956ef0d6ee11ea8f41e1f6f2aa78) | Hart, ed., Title Law Associates Newsletter Vol, 1 No. 4, p. 3 (Fall 2000). |
| [18](#co_fnRef_I7c956ef1d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. § 6-841.02(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS6-841.02&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.32](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.32&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I7c956ef2d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. § 6-841.02(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS6-841.02&originatingDoc=If4f512246fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:16 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:16. Regulation of the insurance contract

Statutes occasionally provide that certain state laws applicable to general insurers do not apply to title insurers.[1](#co_footnote_I7c9dac50d6ee11ea8f41e1f6f2a) General provisions regulating the insurance contract and claims conduct do apply to title insurance, however. Many states apply one or more of the contract provisions discussed in §§ [18:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a18&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [18:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a19&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) below to contracts for title insurance.

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| **Footnotes** | |
| [1](#co_fnRef_I7c9dac50d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Okla. Stat. Ann. tit. 36, § 5005](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5005&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (to the extent not modified by the provisions of this article, title insurers shall be subject to and governed by the other applicable provisions of the insurance code; no new insurance law hereafter enacted shall apply to title insurers unless they be expressly referred to therein). *See also* [Ala. Code § 27-14-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-14-2&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.42.010](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.010&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1101&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-79-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-79-102&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-24-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-24-2&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-22&originatingDoc=If4f512276fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:17 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:17. Regulation of the insurance contract—Filing and approval of policy forms

Most state regulatory agencies do not expressly prescribe the content of title insurance policies. What often is required is filing with the regulatory agency any title insurance form an insurer wishes to issue. Some states limit their filing requirement to those [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms for which regulated rates are charged. Other states designate particular types of title insurance forms that are subject to the filing requirement. For example, New York’s law mandates the filing of title insurance forms and also directs title insurance companies to both offer and file an owner’s policy form that will cover the property’s full market value on the date a loss is discovered.[1](#co_footnote_I7ca99330d6ee11ea8f41e1f6f2a) Nebraska law specifies that the forms subject to the state’s filing requirement are title insurance commitments and title insurance policies, including all standard form endorsements.[2](#co_footnote_I7ca99331d6ee11ea8f41e1f6f2a) Nebraska’s filing requirement does not apply to reinsurance agreements.[3](#co_footnote_I7ca99332d6ee11ea8f41e1f6f2a) Neither does it apply to special exceptions resulting from a particular [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), special coverage added by endorsement, or other specific agreements as to coverage that result from a particular title examination.[4](#co_footnote_I7ca99333d6ee11ea8f41e1f6f2a) Such regulations permit states to monitor standard title insurance coverage while giving title insurers and insurance applicants the flexibility needed to contract to meet particular needs.

In the small number of states that do prescribe the content of title insurance policies, it is more difficult for insureds to arrange for individualized coverage. New Mexico, Florida and Texas require title insurers to use policy forms that are promulgated by the regulatory agency.[5](#co_footnote_I7ca9ba40d6ee11ea8f41e1f6f2a) In states where the forms of title policies are fixed and cannot be readily changed, title insurers may be restricted in their ability to provide new or additional coverages by endorsement. See also §§ [18:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a16&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a20&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing title insurance rate regulation.

Title insurers may file their own forms or, in many states, a title insurance rating bureau or state trade association may file on their members’ behalf. See also [§ 18:24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a24&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing title insurance rating bureaus.

A number of states direct only that title insurers file their forms with the regulatory agency as a precondition to their use; they do not direct any agency action.[6](#co_footnote_I7ca9ba44d6ee11ea8f41e1f6f2a) If the regulatory agency does not contact the insurer after a specified number of days, the form may be used at the proposed rate. These are described as “file and use” states. Other states require title insurance forms to be filed with, and approved by, the regulatory agency.[7](#co_footnote_I7ca9e150d6ee11ea8f41e1f6f2a) These different approaches are discussed more fully in §§ [18:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a21&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a26&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in conjunction with title insurance rate regulation.

State regulatory agencies that are empowered to disapprove title insurers’ proposed policy forms should have to have a reasonable basis for doing so. In some states, permissible grounds for disapproval are set out statutorily.[8](#co_footnote_I7cab19d1d6ee11ea8f41e1f6f2a) For example, in one state, the insurance commissioner may reject a filed title insurance form if it (a) is in violation of the law; (b) has ambiguous or misleading terms, exceptions, conditions, or other provisions; or (c) has any material provision which is substantially illegible.[9](#co_footnote_I7cab40e0d6ee11ea8f41e1f6f2a)

It is uncertain what administrative recourse a title insurer would have if it believes the state regulatory agency disapproved a proposed policy form in bad faith or unreasonably. An option judicially is for the insurer to sue in district court for an order restraining the agency from enforcing its rejection of the form. On the other side of the coin, a Texas case has set a precedent for a *competitor* of a title insurer to appeal an order of the state’s Board of Insurance Commissioners which had *approved* a reinsurance agreement between title insurers. In *Board of Insurance Commissioners v. Title Insurance Association*, a title insurer sued to enjoin the Board’s approval of a reinsurance agreement between two other title insurers on the grounds that it violated the state’s antirebate statute.[10](#co_footnote_I7cab40e1d6ee11ea8f41e1f6f2a) The court held that, while there was no state statute specifically permitting an appeal from an order of the Board approving a contract of the type under review, the right of “proper parties” to subject such an order to judicial review must be implied.[11](#co_footnote_I7cab40e2d6ee11ea8f41e1f6f2a) “The property rights of parties cannot be determined by orders of an administrative agency, without a right of judicial review of such orders…. We cannot ascribe to the Legislature the intention to provide … that an order entered by the Board can be attacked for invalidity only by the Board itself.”[12](#co_footnote_I7cab40e3d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7ca99330d6ee11ea8f41e1f6f2aa78) | [N.Y. Ins. Law § 6409(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): … [E]very title insurance company shall be required to offer, at or prior to title closing, an optional policy form which will insure the title of owner-occupied real property used predominantly for residential purposes which consists of not more than four dwelling units for an amount equal to the market value of the property at the time a loss is discovered. |
| [2](#co_fnRef_I7ca99331d6ee11ea8f41e1f6f2aa78) | [Neb. Rev. Stat. § 44-1998](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1998&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7ca99332d6ee11ea8f41e1f6f2aa78) | [Neb. Rev. Stat. § 44-1998](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1998&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7ca99333d6ee11ea8f41e1f6f2aa78) | [Neb. Rev. Stat. § 44-1998](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1998&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7ca9ba40d6ee11ea8f41e1f6f2aa78) | [N.M. Stat. Ann. § 59A-30-4(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-4&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (authorizing the superintendent to promulgate rules and regulations requiring uniform forms and premiums), § 59A-30-5 (“No title insurer or title insurance agent shall use any form of title insurance other than the uniform forms promulgated by the superintendent under the New Mexico Title Insurance Law…. The superintendent shall not promulgate any uniform form under which the coverage offered is excessive or inadequate in relation to the premium charged for the coverage.”). |
| [6](#co_fnRef_I7ca9ba44d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. Ann. § 20-1591](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1591&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Every title insurer shall file with the director all forms of title policies and other contracts of title insurance before issuance of any policy or contract); [Cal. Ins. Code § 12401.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.1&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) & [Cal. Code Regs. tit. 10, § 2556.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000937&cite=10CAADCS2556.1&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurers must file all regularly issued forms of title policies and every modification thereof which the insurer proposes to use); [Haw. Rev. Stat. § 431:20-121](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-121&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires filing of forms together with the forms of all printed endorsements or other modifications of such contracts proposed to be used); [Mo. Rev. Stat. § 381.085](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.085&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Mo. Code Regs. tit. 20, § 500-7.100](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012891&cite=20MOADC500-7.100&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires form filing); [N.Y. Ins. Law § 6409(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“No title insurance policy shall be issued or delivered in this state, unless and until a copy of the form thereof shall have been filed with the superintendent for his information.”); [Ohio Rev. Code Ann. § 3953.28](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.28&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4606](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4606&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“All forms of title insurance policies and interim binders that are customarily used by any title insurance company in connection with the insurance of titles to property located in this Commonwealth shall be filed with the Commission.”). |
| [7](#co_fnRef_I7ca9e150d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-14-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-14-8&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. §§ 21.42.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.120&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.42.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.130&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-79-109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-79-109&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-421](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-421&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and Conn. Bull. T-1-90, T-2-90 (require filing and approval of forms—if title insurer will be using a new or revised form, the insurer must file a copy of the proposed forms and endorsements with an explanation of the reasons for and effect of any coverage changes from existing forms); [Fla. Stat. Ann. § 627.777](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.777&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A title insurer may not issue or agree to issue any form of title insurance binder, title insurance commitment, preliminary report, title insurance policy, or other contract of title insurance or related form until it is filed with and approved by the office. . . . The office shall approve or disapprove a form filed for approval within 180 days after receipt.”); [Ga. Code Ann. § 33-24-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-24-9&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2705&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Iowa Code § 16.91](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires forms used by Iowa title guaranty division for title guaranty program to be approved by the guaranty division board); Md. Ins. Code Ann. § 11-206; [Mich. Comp. Laws Ann. § 500.7301(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7301&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1998](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1998&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.120&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. §§ 17:46B-25](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-25&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:46B-54](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-54&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Admin. Code tit. 11, r. 10.1201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003805&cite=11NCADC10.1201&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires filing and approval of forms); [S.D. Codified Laws Ann. §§ 58-25-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-8&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [58-25-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-10&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires filing and written approval or disapproval of forms, but if the director does not approve or disapprove the forms within 15 days (30 days if the period is extended), the form is deemed approved). |
| [8](#co_fnRef_I7cab19d1d6ee11ea8f41e1f6f2aa78) | *See* [Alaska St. § 21.42.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.130&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. Ann. § 38a-422](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-422&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-329](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-329&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7cab40e0d6ee11ea8f41e1f6f2aa78) | [Haw. Rev. Stat. § 431:20-121](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-121&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7cab40e1d6ee11ea8f41e1f6f2aa78) | [Board of Ins. Com’rs v. Title Ins. Ass’n of Tex., 153 Tex. 574, 577, 272 S.W.2d 95, 97 (1954)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1954102257&pubNum=0000713&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_97&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_97). |
| [11](#co_fnRef_I7cab40e2d6ee11ea8f41e1f6f2aa78) | [Board of Ins. Com’rs v. Title Ins. Ass’n of Tex., 153 Tex. 574, 577, 272 S.W.2d 95, 97 (1954)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1954102257&pubNum=0000713&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_97&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_97). |
| [12](#co_fnRef_I7cab40e3d6ee11ea8f41e1f6f2aa78) | [Board of Ins. Com’rs v. Title Ins. Ass’n of Tex., 153 Tex. 574, 577, 272 S.W.2d 95, 97 (1954)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1954102257&pubNum=0000713&originatingDoc=If4f5122a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_97&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_97). |

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2 Title Ins. Law § 18:18 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:18. Regulation of the insurance contract—Execution of policies

A few states have provisions regarding execution of policies that apply to title insurers. These statutes usually require that every insurance policy must be executed in the name of the insurer through an officer, attorney-in-fact, or duly authorized representative and allow a facsimile signature in lieu of an original signature of an executing individual.[1](#co_footnote_I7cafd4c0d6ee11ea8f41e1f6f2a) Of course, the title insurer should be estopped from raising execution by the incorrect officer or employee as a defense to an insured’s claim.

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| **Footnotes** | |
| [1](#co_fnRef_I7cafd4c0d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-14-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-14-14&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.42.190](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.190&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1116&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-79-116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-79-116&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 2716](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2716&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 627.416](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.416&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-24-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-24-13&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-1819](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-1819&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.14-190](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.14-190&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. tit. 36, § 3618](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S3618&originatingDoc=If4f5122d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:19 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:19. Regulation of the insurance contract—Readability requirements

One state requires the regulatory agency to adopt rules and regulations regarding form and readability requirements for title insurance policies.[1](#co_footnote_I7cb775e0d6ee11ea8f41e1f6f2a) In seven states, both ambiguity of terms and illegibility are listed as grounds upon which the insurance commissioner may disapprove policy forms submitted by a title insurer.[2](#co_footnote_I7cb775e1d6ee11ea8f41e1f6f2a) In other states, the problem of misleading or ambiguous provisions in title policy forms appears to be left to consumer protection statutes and to the common law rule that ambiguous clauses will be construed against the insurer. A number of states expressly set out in statutes another general common law rule, i.e., that an insurance contract is to be construed by the entirety of its terms and conditions as set forth in the policy and as modified by any attached rider.[3](#co_footnote_I7cb775e2d6ee11ea8f41e1f6f2a)

Several states disallow incorporating corporate charters, bylaws, or similar documents into the insurance policy form by reference. For example, statutes prohibit title insurance policies from containing any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer a part of the contract unless such portion is set forth in full in the policy.[4](#co_footnote_I7cb79cf0d6ee11ea8f41e1f6f2a) This protects consumers of title insurance from hidden qualifications or limitations on their insurance coverage.

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| **Footnotes** | |
| [1](#co_fnRef_I7cb775e0d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. Ann. § 20-1110.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1110.01&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7cb775e1d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-14-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-14-9&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.42.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.130&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. Ann. § 38a-422](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-422&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 624.4412](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.4412&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-24-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-24-10&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (applicable to title insurance under § 33-24-2); [Haw. Rev. Stat. § 431:20-121](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-121&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-329](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-329&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7cb775e2d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-14-17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-14-17&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.42.230](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.230&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1119](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1119&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-79-119](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-79-119&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 627.419](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.419&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-24-16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-24-16&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. Ann. § 431:10-237](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a10-237&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-1822](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-1822&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.14-360](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.14-360&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Stat. Ann. § 22:654](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a654&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-15-316](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-15-316&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 3621](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S3621&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. § 48.18.520](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.18.520&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [W. Va. Code § 33-6-30](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-6-30&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7cb79cf0d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code § 27-14-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-14-13&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.42.180](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.42.180&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-79-113](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-79-113&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 2715](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2715&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 627.415](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.415&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-24-19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-24-19&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. Ann. tit. 36, § 3615](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S3615&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-307](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-307&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code Ann. § 48.18.160](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.18.160&originatingDoc=If4f512306fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:20 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:20. Regulation of the insurance contract—Mandated disclosures about title policies’ coverage and availability of owners’ title insurance

Residential purchasers frequently do not understand that they are not protected by title insurance policies they are required to purchase for their lenders. They rely on the fact that the lender agreed to give the loan to assume that the lender’s title insurer did not discover any significant title defects. Buyers also assume that, if a title problem is discovered after the purchase, the lender’s title insurer will cure the defect and the owners will share in that benefit. To help to correct consumers’ misunderstandings, several states statutorily require written disclosure to home purchasers of the fact that their lender’s [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) does not cover the owner’s property interest.[1](#co_footnote_I7cbec8e0d6ee11ea8f41e1f6f2a) In some states, the title insurance company must obtain a written statement, signed by the owners, that the owners received such notice and waived their right to purchase an owner’s title insurance policy.[2](#co_footnote_I7cc00160d6ee11ea8f41e1f6f2a)

Presumably, legislatures pass such statutes with the intent of advising and protecting home buyers. Evidence of that intention appears in the New York statute which combines the title insurer’s obligation to specifically offer an owner’s policy to any homeowner prior to title closing with a mandate that the owner’s coverage offered must equal the fair market value of the residential property at the time the loss is discovered.[3](#co_footnote_I7cc02870d6ee11ea8f41e1f6f2a)

It is uncertain what the liability might be for violation of such statutes. In states where statutes place the burden of disclosure on title insurance companies, would a company that failed to so advise the homebuyer be estopped from asserting that the owner was not an insured under the lender’s policy? Could the title company be liable in tort for breach of duty to a homebuyer who did not receive the notice? This writer believes the answer to both these questions should be, “Yes.” Because title companies imply to purchasers that they are competent to perform all title work necessary to execute their home purchase and encourage the belief that attorneys are not needed in the modern home purchase, title companies should be held strictly responsible for compliance with any duties accepted by contract or imposed by law.

Under the Rhode Island statute, an attorney for the mortgage is given the obligation of offering an owner’s title policy to the prospective mortgagor. Would an attorney who fails to comply be liable for malpractice?[4](#co_footnote_I7cc02871d6ee11ea8f41e1f6f2a) If state law gives the mortgagee’s attorney the duty to advise about the protection offered by an owner’s title insurance policy, may their advice also include information about the alternative of title assurance by attorney’s opinion?[5](#co_footnote_I7cc02872d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7cbec8e0d6ee11ea8f41e1f6f2aa78) | *See* Md. Ins. Code Ann. § 22-102; [N.Y. Ins. Law § 6409(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [R.I. Gen. Laws § 19-9-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000038&cite=RISTS19-9-5&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. §§ 2704.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2704.051&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2704.052](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2704.052&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1992](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1992&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.210(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.210&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Notice is hereby given … that a mortgagee’s title insurance policy is to be issued to your mortgage lender. The policy does not afford title insurance protection to you in the event of a defect or claim of defect in title to the real estate which you are acquiring. An owner’s title insurance policy affording title insurance protection to you in the amount of your purchase price, or for the amount of your purchase price plus the cost of any improvements which you anticipate making, may be purchased by you.”); [Wyo. Stat. § 26-23-331(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-331&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“if no owner’s policy has been ordered, [title insurer] shall inform the borrower in writing that the mortgagee’s policy is to be issued, that the mortgagee’s policy does not protect the borrower and that the borrower may obtain an owner’s title insurance policy for his protection.”). |
| [2](#co_fnRef_I7cc00160d6ee11ea8f41e1f6f2aa78) | *See* [Wyo. Stat. § 26-23-331(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-331&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (after receiving notice that the mortgagee’s policy does not protect the borrower, “[i]f the borrower elects not to purchase an owner’s title insurance policy, the title insurer or title agent shall obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner’s title insurance policy.”). *See also* [Neb. Rev. Stat. § 44-1992](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1992&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requiring title insurer to provide written notice that the lender’s title insurance policy does not protect the owner of the property, and that the purchaser-mortgagor may obtain an owner’s title insurance policy; title insurer must retain a copy of this notice, signed by the owner, for at least five years); [Nev. Rev. Stat. § 692A.210(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.210&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (containing a form of notice with an area for the home purchaser to acknowledge its receipt and a form of waiver to be signed by the home buyer); Tenn. Comp. R. & Regs. 0780-1-12-.10 (containing a form of written notice and waiver) and [Tenn. Code Ann. § 56-35-133](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-133&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. §§ 2704.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2704.051&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2704.052](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2704.052&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4616](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4616&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (require settlement agents to “obtain from the purchaser a statement in writing that he has been notified by the settlement agent that the purchaser may wish to obtain owner’s title insurance coverage including affirmative mechanics’ lien coverage, if available, and of the general nature of such coverage, and that the purchaser does or does not desire such coverage.”). |
| [3](#co_fnRef_I7cc02870d6ee11ea8f41e1f6f2aa78) | [N.Y. Ins. Law § 6409(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7cc02871d6ee11ea8f41e1f6f2aa78) | [Title Insurance Law § 7:9 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0287812494&pubNum=0152721&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7cc02872d6ee11ea8f41e1f6f2aa78) | *See* [Title Insurance Law § 7:9 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0287812494&pubNum=0152721&originatingDoc=If4f512336fac11d98776f22b20adbd85&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:21 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:21. Rate regulation

One purpose behind rate regulation is to promote the public welfare by ensuring that title insurance rates are not excessive, inadequate, or unfairly discriminatory.[1](#co_footnote_I7cc4e360d6ee11ea8f41e1f6f2a) Therefore, in regulating title insurance rates, the state agency should consider the equity of the prices consumers are being charged, the costs of producing the title insurance product, and profitability necessary to keep the title company in business during both good and bad real estate economies.

A second purpose of rate regulation is to permit cooperative action between title insurance companies in rate making. Where states do not expressly authorize title insurance companies to form rating bureaus or otherwise work or consult with other title companies to establish rates, federal antitrust issues may be raised. See [§ 18:24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a24&originatingDoc=If4f512366fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§§ 15:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a1&originatingDoc=If4f512366fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

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| **Footnotes** | |
| [1](#co_fnRef_I7cc4e360d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.360](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.360&originatingDoc=If4f512366fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 1994 Ariz. Legis. Serv. 20-341; [Cal. Ins. Code § 12401](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401&originatingDoc=If4f512366fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2706](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2706&originatingDoc=If4f512366fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 412:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS412%3a15&originatingDoc=If4f512366fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. 17:46B-41](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-41&originatingDoc=If4f512366fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:22 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:22. Rate regulation—Methods of rate regulation

Many states require title insurers to file rate schedules for their various policies and services with the regulatory agency before the rates may become effective. Some states regulate only risk rates, while others regulate all rates related to the issuance of a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), including commissions to title agents for title searches. Legal challenges may arise anytime the regulatory agency’s regulation of rates is over-inclusive or under-inclusive. For example, regulation of charges for title searches and examinations in communities where these are provided by attorneys may unlawfully regulate the practice of law.[1](#co_footnote_I7cde5ed0d6ee11ea8f41e1f6f2a) Exclusion of certain types of charges from rate regulation, however, would remove the filed rate doctrine and state action doctrine defenses to antitrust allegations in the setting of those rates.[2](#co_footnote_I7cde85e0d6ee11ea8f41e1f6f2a)

One group of states directs title insurers to file their rate schedules with the regulatory agency as a precondition to their use; the agency need not always respond.[3](#co_footnote_I7cde85e4d6ee11ea8f41e1f6f2a) These are described as “file and use” states. In some of these states, the insurer may use the rates as soon as they have been filed; in others, the insurer must wait a specified number of days, and if the regulatory agency did not notify the insurer of objections, the rates then may be charged. *See also* [§ 18:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a17&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing title insurance form filing regulations.

Some states’ regulations require that, along with the filing of the proposed rates, the title insurer must justify them by submitting a statement of the basis on which the rates were determined.[4](#co_footnote_I7cded400d6ee11ea8f41e1f6f2a) These are referred to as “file and use and justify” states.[5](#co_footnote_I7cded401d6ee11ea8f41e1f6f2a) A common statutory provision is that a rate may be justified by the experience or judgment of the insurer or rating organization, its interpretation of statistical data, experience of other insurers or rating organizations or any other factors deemed relevant by the insurer or rating organization.[6](#co_footnote_I7cded402d6ee11ea8f41e1f6f2a) For example, North Carolina requires that premium rates on title insurance be based on the purchase price of the real estate being conveyed, or on the loan amount, and prohibits the establishment of premium rates as flat fees.[7](#co_footnote_I7cded403d6ee11ea8f41e1f6f2a) In states requiring a justification statement, the statement often is open to public inspection.[8](#co_footnote_I7ce0a8c0d6ee11ea8f41e1f6f2a)

Another group of states requires more regulatory agency supervision and directs that title insurance rate schedules must be both filed with, and affirmatively approved by, the regulatory agency before the rates may become effective.[9](#co_footnote_I7ce0cfd0d6ee11ea8f41e1f6f2a)

An additional group of states require the regulatory agency to promulgate the rates that title insurers must use.[10](#co_footnote_I7ce0cfd1d6ee11ea8f41e1f6f2a) Texas is such a state. Texas law requires the state insurance commissioner to “consider all relevant income and expenses of title insurance companies and title insurance agents” and to fix rates that are “reasonable as to the public” and “nonconfiscatory” as to title insurers. Before a premium rate may be fixed or a fixed rate changed, the department must provide reasonable notice, and a hearing must be afforded to title insurance companies, title insurance agents, and the public.[11](#co_footnote_I7ce0cfd2d6ee11ea8f41e1f6f2a)

A final group of states regulates rates merely by mandating that title insurance premiums cannot “be unreasonable.”[12](#co_footnote_I7ce0cfd3d6ee11ea8f41e1f6f2a) Under these types of regulations, a proposed rate may be disapproved if the profit it allows the company is excessive in comparison to the risks the company is assuming and the services the company is providing.

Even in those states discussed above that more heavily regulate title insurance rates, statutes commonly also direct that rates “shall not be excessive, inadequate, or unfairly discriminatory” between risks that involve essentially the same expense and exposure to loss.[13](#co_footnote_I7ce0f6e0d6ee11ea8f41e1f6f2a) “Reasonableness” or “excessiveness” of rates may be measured by considering past and prospective losses, current exposure to loss, underwriting practices, past and prospective expenses, including commissions paid to title agents and premium taxes, income from investments, contingencies, desirability for rate stability, and a reasonable profit.[14](#co_footnote_I7ce0f6e1d6ee11ea8f41e1f6f2a) The regulatory authority should take into account that a title company’s expenses and costs can vary depending upon individual operating methods. Also, rates and the rationale for them need not be based on only the claims and expense experience of the particular title insurer or even those in the regulating state; the experience of title insurers across the nation may be considered, particularly when examining rates for multi-parcel, multi-state transactions. Furthermore, when considering whether rates are reasonable or excessive, a Nebraska statute states that regulators can take into account the cycles in real estate markets. This would permit rates for title searches and policies to stay the same in strong real estate markets as in weak markets. Though the title insurer’s profits might seem excessive at the time, they allow for growth in assets and help to assure the title insurer’s solvency in periods when the real estate economy is depressed.[15](#co_footnote_I7ce11df0d6ee11ea8f41e1f6f2a)

Rates can be challenged as “inadequate” if they: (a) will not cover the insurer’s expenses and projected losses for the service or coverage provided, (b) pose risks to the safety and soundness of the title insurer, or (c) suggest an attempt to substantially lessen competition and create a monopoly.[16](#co_footnote_I7ce11df1d6ee11ea8f41e1f6f2a) Rates may be considered “unfairly discriminatory” if they are not reasonably related to the services performed or the risks accepted.[17](#co_footnote_I7ce11df2d6ee11ea8f41e1f6f2a)

In title insurance rate schedules, rates are most often stated according to the types of title policies or services offered. In some states, however, rate classifications may be further broken down into rates for individual risks or services within a classification. In California, such further divisions are based upon the size of particular types of transactions.[18](#co_footnote_I7ce11df3d6ee11ea8f41e1f6f2a) The reasonableness, excessiveness, or inadequacy of a rate for a type of policy issued for a particular amount then may be scrutinized based upon the effect of the size of the transaction upon the solvency of the company, expense elements including management time for that size transaction, the geographic location of the transaction, the company’s individual experience with rates in similar transactions, and other reasonable considerations.[19](#co_footnote_I7ce14500d6ee11ea8f41e1f6f2a)

Title insurers’ approved rate schedules often offer a “revamping/refinancing” discount rate for all policies issued to a lender who is refinancing a previously insured loan with the same borrower on the same property within a stated time period.[20](#co_footnote_I7ce14501d6ee11ea8f41e1f6f2a) Some state regulations similarly provide for a discounted “re-issue rate” when the same title insurer is insuring the same property within a stated number of years.[21](#co_footnote_I7ce14504d6ee11ea8f41e1f6f2a)

To give the regulatory agency the specific data needed to make decisions on particular rates, many states have also adopted regulations regarding procedures for title insurance companies’ record-keeping and reporting of data.[22](#co_footnote_I7ce14505d6ee11ea8f41e1f6f2a) The most widely required forms for reporting data regarding a title insurer’s overall profitability are the National Association of Insurance Commissioners’ Annual Statement (Form 9) and the American Land Title Association’s Uniform Financial Reporting Plan.[23](#co_footnote_I7ce16c10d6ee11ea8f41e1f6f2a)

In some filed-rate states, the title insurer’s rate schedules, plus any supporting statement or justification, must be open to public inspection after the rate is effective.[24](#co_footnote_I7ce16c11d6ee11ea8f41e1f6f2a) In California and a few other states, filed rates must be available to the public *before* they can become effective.[25](#co_footnote_I7ce16c12d6ee11ea8f41e1f6f2a) Additionally, a small number of states give the regulatory agency the option of holding a public hearing before a rate filing is approved.[26](#co_footnote_I7ce16c13d6ee11ea8f41e1f6f2a)

In the opposite situation, where a regulatory agency is rejecting a rate which a title insurance company or rating bureau has filed, many state statutes provide that the title insurance company or rating organization is entitled to a hearing.[27](#co_footnote_I7ce16c14d6ee11ea8f41e1f6f2a) Case law has upheld the rule that a hearing should be provided before the regulatory agency disapproves a rate a title insurer has proposed.[28](#co_footnote_I7ce19320d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7cde5ed0d6ee11ea8f41e1f6f2aa78) | Lipshutz, So You’re Thinking About Rate Regulation, 72 Title News 12, 13 (May/June 1993). |
| [2](#co_fnRef_I7cde85e0d6ee11ea8f41e1f6f2aa78) | Lipshutz, So You’re Thinking About Rate Regulation, 72 Title News 14 (May/June 1993). *See* §§ [15:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a1&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [15:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a10&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [15:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a13&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) considering antitrust law and the title insurance business. |
| [3](#co_fnRef_I7cde85e4d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.370](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.370&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (30 days); [Ariz. Rev. Stat. Ann. § 20-376(D)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-376&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (30 days); [Colo. Rev. Stat. §§ 10-11-118](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-118&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10-4-406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-4-406&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (no use before effective date, or before 15 days if schedule was placed on file for public inspection); [McCray v. Fidelity Nat. Title Ins. Co., 682 F.3d 229, 2012-1 Trade Cas. (CCH) ¶ 77922 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904752&pubNum=0000506&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing [Del. Code Ann. tit. 18, § 2504](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2504&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.22-020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-020&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), construed in [Scott v. First American Title Ins. Co., 276 F.R.D. 471, 473–474 (E.D. Ky. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026075782&pubNum=0000344&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_473&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_473); Md. Ins. Code Ann. §§ 11-403, 11-404 (deemed approved after 15 days); [Mo. Rev. Stat. § 381.032](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.032&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [Mo. Code Regs. Ann. tit. 20, § 500-7.100(2)(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012891&cite=20MOADC500-7.100&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer shall file with director a completed insurance rate reporting form for the risk rates it proposes to use in each county and each city not within a county; effective date is 30 days after director receives the form); [Mont. Code Ann. § 33-25-212](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-212&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1997](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1997&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.120(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.120&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (30 days); [N.H. Rev. Stat. Ann. § 416-A:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a17&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6409](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. Ann. § 910-37(d) (30 days); [S.D. Codified Laws Ann. § 58-25-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-10&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (30 days); [Tenn. Code Ann. § 56-35-111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-111&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (60-day wait, then use if the filing was not turned down); [Utah Code Ann. § 31A-19a-209(4)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-19A-209&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (file 30 days ahead of use); [Wash. Rev. Code Ann. § 48.29.140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.140&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (effective upon expiration of 15 days after filing), criticized by [Blaylock v. First American Title Ins. Co., 504 F. Supp. 2d 1091, 1096 (W.D. Wash. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012920558&pubNum=0004637&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1096&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1096):  Although the rates are submitted, and the Commissioner has 15 days in which review could occur before the rates go into effect, the Code does not actually mandate review. Title insurers are not required to consider the factors listed under § 48.19.030(3) in setting their rates, nor are they required to submit the documentation laid out in § 48.19.040 in order to demonstrate compliance with the standards set out in WAC § 284-24-065.  In addition, the Code provides no mechanism by which consumers may provide input on rate-setting for title insurance. Unlike other insurers, title insurers are not required to provide consumers access to the information pertinent to the setting of the rates upon request. Title insurers are not obligated to provide aggrieved persons reasonable means to be heard, nor does the Code provide a mechanism by which an aggrieved person can petition the Commissioner for a hearing as to title insurance rates. Thus, the Code does not require any review by the agency and does not provide alternative means for constituents to participate in the rate-setting process. For title insurance, then, the rates are largely set by the title insurers themselves.  *Compare* [McCray v. Fidelity Nat. Title Ins. Co., 682 F.3d 229, 2012-1 Trade Cas. (CCH) ¶ 77922 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904752&pubNum=0000506&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [In re New Jersey Title Ins. Litigation, 683 F.3d 451, 2012-1 Trade Cas. (CCH) ¶ 77921 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904745&pubNum=0000506&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) where the Third Circuit Court of Appeals discusses states’ different approaches to rate regulation and concludes that state supervision exists unless a state has no rate regulation. |
| [4](#co_fnRef_I7cded400d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.380](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.380&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (rate filing may be justified by experience of the title insurer, insurer’s interpretation of statistical data, any other relevant factors); [Cal. Ins. Code § 12401.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.2&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Conn. Bull. T-1-90 (requires insurers to develop rates, file rates, and show supporting information—the rate filing must include: (1) five years of data on number of titles insured, exposure, policy amounts, size of risk, earned premium, losses incurred, losses paid, losses unpaid, and number of claims incurred, separately for each year and all years combined, (2) any trend for frequency and/or severity of loss used in determination of rates, (3) exhibit showing individual expenses, premium taxes, fees, loss adjustment expenses, and details as to how arrived at, (4) underwriting profit and contingencies, (5) explicit adjustment for investment income, (6) a complete set of rate schedules, (7) rules to be used, along with an explanation of any changes from existing rates and rules being proposed, and (8) statewide rate level indications and proposed rate level to be adopted); [Idaho Code § 41-2706](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2706&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (justification must be filed with the proposed rates; filing must be justified by experience or judgment of the insurer, its interpretation of statistical data, the experience of other title insurers, or any other factors deemed relevant); [Mont. Code Ann. § 33-25-212](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-212&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (filed rates must be accompanied by supporting data); [N.J. Stat. Ann. 17:46B-43](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-43&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (justification must be filed with the proposed rates; filing must be justified by experience or judgment of the insurer, its interpretation of statistical data, the experience of other title insurers, or any other factors deemed relevant); Ohio Laws, File 30, § 3935.04 and [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (analyzing whether the Filed Rate Doctrine applies to the Ohio title insurance industry and precluding an award of damages under antitrust laws where recovery is premised on payments made under rates approved by a regulatory agency); 40 Pa. Cons. Stat. § 910-38. |
| [5](#co_fnRef_I7cded401d6ee11ea8f41e1f6f2aa78) | Lipshutz, So You’re Thinking About Rate Regulation, 72 Title News 12 (May/June 1993). |
| [6](#co_fnRef_I7cded402d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.380](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.380&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2706](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2706&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. 17:46B-43 (1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-43&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 1993 Ohio Laws, File 30, § 3935.04; 40 Pa. Cons. Stat. § 910-38. |
| [7](#co_fnRef_I7cded403d6ee11ea8f41e1f6f2aa78) | [N.C. Gen. Stat. § 58-26-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-1&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7ce0a8c0d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.380](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.380&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12401.7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.7&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-420](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-420&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Ohio Laws, File 30, § 3935.04 and [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-38; [S.C. Code Ann. § 38-75-990](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-990&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-327](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-327&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7ce0cfd0d6ee11ea8f41e1f6f2aa78) | *See* [Conn. Gen. Stat. § 38a-419](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-419&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), Conn. Bull. T-1-90 (requires insurers to develop rates and show supporting information); [Idaho Code § 41-2706](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2706&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), Idaho Dep’t of Ins. Reg. 18.01.25.004 (title insurer must file premium schedules and obtain approval by order of director of insurance department); [Mo. Rev. Stat. Ann. 381.032](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.032&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (premium rate schedules must be filed with and approved by the director); [N.J. Stat. Ann. 17:46B-42](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-42&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:46B-45](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-45&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (standards of approval); [Wyo. Stat. § 26-23-326](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-326&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7ce0cfd1d6ee11ea8f41e1f6f2aa78) | *See* [Fla. Stat. Ann. § 627.782](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.782&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agency shall adopt premium rates for types of title insurance contracts and services); Fla. Admin. Code R. 690-186.003 (lists risk rate premiums to be charged, classified by amount of liability written for different types of policies); [Iowa Code § 16.91](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS16.91&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title guaranty division shall set a charge for the title guaranty program in an amount sufficient to permit the program to be self-sustaining); [N.M. Stat. Ann. § 59A-30-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-6&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [N.M. Admin. Code 13.14.9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013444&cite=NMADC13.14.9&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (sets out premium rate schedules, classified into several categories: general rates, nonpolicy rates, single issue rates, simultaneous issue rates, reissue rates, endorsement rates, construction loan policy rates); [Tex. Ins. Code Ann. § 2703.151](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.151&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I7ce0cfd2d6ee11ea8f41e1f6f2aa78) | [Tex. Ins. Code Ann. §§ 2703.152](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.152&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2703.201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.201&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [2703.207](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.207&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I7ce0cfd3d6ee11ea8f41e1f6f2aa78) | *See* [Va. Code Ann. § 38.2-4608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4608&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I7ce0f6e0d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.390](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.390&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-375](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-375&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12401.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.3&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-418](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-418&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 2503(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2503&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 627.782(4)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.782&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2706](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2706&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.22-020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-020&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. § 22:1404](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a1404&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 2303](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS2303&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 11-402(b, c); [Mo. Rev. Stat. § 381.092](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.092&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-212(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-212&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3935.03](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.03&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 737.310(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS737.310&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 1183(d); [S.C. Code Ann. § 38-75-970](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-970&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. §§ 58-25-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-3&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [58-25-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-4&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4608&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code § 48.29.140(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.140&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-325(a) to (c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-325&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See also* [N.M. Stat. Ann. § 59A-30-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-6&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (rates cannot be “excessive, inadequate, or unfairly discriminatory and shall contain an allowance permitting a profit that is not unreasonable in relation to the risk of the business of title insurance”). |
| [14](#co_fnRef_I7ce0f6e1d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.390](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.390&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12401.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.3&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-418](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-418&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 627.782(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.782&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2706](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2706&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. § 22:1404](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a1404&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 2303](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS2303&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.092](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.092&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. 17:46B-44](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-44&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3935.03](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.03&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 1183(a); [S.C. Code Ann. § 38-75-970(E)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-970&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-25-6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-6&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4608&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-325](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-325&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (insurance commissioner may consider: (i) costs of underwriting risks, (ii) amounts paid to title agents, (iii) other operating expenses of the insurer, (iv) payment of claims, (v) investment income, (vi) reasonable profit, (vii) taxes, and (viii) any other factors the insurance commissioner deems relevant). |
| [15](#co_fnRef_I7ce11df0d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.390](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.390&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): Making of rates.   1. (a) A title insurance company shall make rates that are not excessive or inadequate, that do not unfairly discriminate between risks in this state that involve essentially the same exposure to loss and expense elements, and that give due consideration to: 2. (1) the desirability for stability of rate structures; 3. (2) the necessity of assuring the financial solvency of title insurance companies in periods of economic depression by encouraging growth in assets of title insurance companies in periods of high business activity; 4. (3) the necessity for assuring a reasonable margin of underwriting and operating profit; and 5. (4) investment income. 6. (b) A title insurance company shall adopt basic classifications of policies or contracts of title insurance that shall be used as the basis for rate-making.   *See also* [Mo. Rev. Stat. § 381.092](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.092&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I7ce11df1d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Cal. Ins. Code § 12401.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.3&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-325(a), (c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-325&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I7ce11df2d6ee11ea8f41e1f6f2aa78) | *See, e.g.,* [Conn. Gen. Stat. § 38a-418](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-418&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.C. Code Ann. § 38-75-970](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-970&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-325](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-325&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I7ce11df3d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12401.3(a), (b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.3&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I7ce14500d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12401.3(a), (b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.3&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I7ce14501d6ee11ea8f41e1f6f2aa78) | *See e.g.*, [Boucher v. First American Title Ins. Co., 2012 WL 3023316 (W.D. Wash. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028274994&pubNum=0000999&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (noting that in Washington. First American’s rate applicable to refinancing transactions is called a “reorganization rate”); [Scott v. First American Title Ins. Co., 276 F.R.D. 471, 474 (E.D. Ky. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026075782&pubNum=0000344&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_474&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_474) (First American offered a discounted “Substitution” rate); [Lewis v. First American Title Ins. Co., 265 F.R.D. 536, 549 (D. Idaho 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021439889&pubNum=0000344&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_549&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_549). *See* infra §§ 15:1 et seq., [§ 18:25](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a25&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§§ 21:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a1&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) for the many cases considering whether a title insurer’s failing to charge a discounted refinancing or re-issue rate in an appropriate transaction violates anti-trust law, RESPA, or common law. |
| [21](#co_fnRef_I7ce14504d6ee11ea8f41e1f6f2aa78) | *See e.g.*, [Boucher v. First American Title Ins. Co., 2012 WL 3023316, \*2 (W.D. Wash. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028274994&pubNum=0000999&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (noting that in Washington. First American’s rate applicable to refinancing transactions is called a “reorganization rate”); [Scott v. First American Title Ins. Co., 276 F.R.D. 471, 474 (E.D. Ky. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026075782&pubNum=0000344&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_474&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_474) (in Kentucky, First American offered a discounted “Reissue” rate). |
| [22](#co_fnRef_I7ce14505d6ee11ea8f41e1f6f2aa78) | *See* [Fla. Stat. Ann. § 627.782 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.782&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12401.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.5&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. Ann. § 381.032(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.032&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1997](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1997&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [23](#co_fnRef_I7ce16c10d6ee11ea8f41e1f6f2aa78) | Lipshutz, So You’re Thinking About Rate Regulation, 72 Title News 14 (May/June 1993). |
| [24](#co_fnRef_I7ce16c11d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.380](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.380&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-118](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-118&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-420](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-420&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-120&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (premium schedules must be made available to the public); [Nev. Rev. Stat. § 692A.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.130&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (every title insurer and every title agent must make fees and charges schedules available to the public; schedules must show the total premium for each type of policy regularly issued); [Ohio Rev. Code Ann. § 3935.04(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.04&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and *see generally* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-38; [S.C. Code Ann. § 38-75-990](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-990&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-327](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-327&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [25](#co_fnRef_I7ce16c12d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12401.7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.7&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (rates shall be “publicly displayed and made readily available to the public for a period of no less than 30 days in each office of the title insurer, underwritten title company, or controlled escrow company in the county to which such rate applies”); [Cal. Code Regs. tit. 10, § 2556(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000937&cite=10CAADCS2556&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires that rate schedules be printed or typed in 10-point or larger type and be prominently displayed in a public place in every title insurer’s office for at least 30 days before the rates become effective and shall continue to be displayed publicly as long as the rates are effective); [Colo. Rev. Stat. Ann. § 10-4-406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-4-406&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A filing which the commissioner has placed on file for public inspection, shall so remain on file for fifteen days … and shall not be approved, disapproved, or become effective during such fifteen-day period except after a public hearing.”); [Idaho Code § 41-2707](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2707&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [26](#co_fnRef_I7ce16c13d6ee11ea8f41e1f6f2aa78) | New Jersey, Colorado, and Missouri provide for hearings at the discretion of the Commissioner. [N.J. Stat. Ann. 17:46B-45(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-45&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Prior to such approval [of the applied-for rate] the insurance commissioner may conduct a public hearing with respect to a rate filing.”); [In re New Jersey Title Ins. Litigation, 683 F.3d 451, 2012-1 Trade Cas. (CCH) ¶ 77921 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904745&pubNum=0000506&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (discussing New Jersey’s approach to rate regulation); [Colo. Rev. Stat. Ann. § 10-4-406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-4-406&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“If not theretofore approved or disapproved … the filing shall be deemed approved … unless within such fifteen-day period the commissioner concludes it to be in the public interest to hold a public hearing to determine whether the filing meets the requirements of this part 4”); [Mo. Rev. Stat. § 381.095](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.095&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [27](#co_fnRef_I7ce16c14d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Ala. Code § 27-25-6(e)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-6&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.66.400(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.400&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. Ann. § 38a-419(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-419&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-40; [Wash. Rev. Code Ann. § 48.29.140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.140&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [28](#co_fnRef_I7ce19320d6ee11ea8f41e1f6f2aa78) | *See* [Pioneer Nat. Title Ins. Co. v. Langdon, 626 P.2d 1032 (Wyo. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981117176&pubNum=0000661&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [U.S. Life Title Ins. Co. of New York v. Department of Commerce and Ins. of State of Tenn., 770 S.W.2d 537 (Tenn. Ct. App. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989072343&pubNum=0000713&originatingDoc=If4f512396fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (court invalidated certain rate regulations because they did not permit sufficient notice to two affected insurers, even though notice had been provided to most title insurance companies operating in the state). |

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2 Title Ins. Law § 18:23 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:23. Rate regulation—Rate deviation

Normally, once rates filed by a title insurer, a rating organization, or the state regulatory agency have become effective, a title insurer may not deviate therefrom.[1](#co_footnote_I7cee8b70d6ee11ea8f41e1f6f2a) Generally, the title insurer must either re-file new rate schedules with a statement of justification or petition the agency for permission to deviate from the rate filing.[2](#co_footnote_I7cee8b71d6ee11ea8f41e1f6f2a) In some filed-rate states, a title insurance company may charge an unfiled rate if an exemption applies. If the risk to be insured is unique or if, for other reasons, it is not practical to file a rate for a particular kind of risk, the regulatory agency may give a title insurer an exemption from the filing obligation for a specific rate or service.[3](#co_footnote_I7cee8b72d6ee11ea8f41e1f6f2a) In California and Pennsylvania, if a title insurer’s filed rate schedule states that additional charges may be made in the event unusual insurance risks are assumed or unusual services are performed, if the person paying for the title insurance agrees in writing, and if the charges are reasonably commensurate with the risks assumed or the costs of the services performed, then charges in excess of those set forth in the title insurer’s existing approved rate filing may be made.[4](#co_footnote_I7cee8b73d6ee11ea8f41e1f6f2a)

Also, in rate regulated states, additional coverage may not be available to insureds by endorsement to or deletion of general exceptions in a standard [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) unless the additional coverage is provided for in the rate manual currently on file or an exemption exists in the regulations. An example is that, in some rate-filed states, the regulatory agencies have not approved the issuance of non-imputation endorsements, though they frequently are used in other states when insuring title in partnerships and limited liability companies.[5](#co_footnote_I7ceeb280d6ee11ea8f41e1f6f2a) For a second example, the Rate Manual of the New York Board of Title Underwriters in 1990 did not permit a title insurance company to insure the right to maintain an encroachment or projection on or over a street below the second story level in an owner’s or leasehold owner’s policy, unless clear statutory or case law established a right for the encroachment or projection to remain.[6](#co_footnote_I7ceeb282d6ee11ea8f41e1f6f2a) On the other hand, the Rate Manual permitted such insurance of an encroachment or projection above the second story level or at any level in a lender’s policy.[7](#co_footnote_I7ceeb283d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7cee8b70d6ee11ea8f41e1f6f2aa78) | *See* [Alabama Code § 27-25-6(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-6&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.66.370(f)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.370&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-379](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-379&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2708(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.22-020(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.22-020&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 11-403(c); [Mo. Rev. Stat. § 381.102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.102&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-212](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-212&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1997](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1997&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.120(5)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.120&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. 17:46B-47](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-47&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3935.07](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.07&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and *see generally* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-37(h); [S.D. Codified Laws Ann. §§ 58-25-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-9&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [58-25-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-13&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-19a-209(6)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-19A-209&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-326(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-326&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7cee8b71d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Fla. Stat. Ann. § 627.783](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.783&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Fla. Admin. Code R. 4-21.003 (rate deviation is allowable—insurer may petition the insurance commissioner for an order permitting a specific rate deviation); Md. Ins. Code Ann. § 11-403(c) (title insurer may only make changes in insurance rates or premiums if a report indicating the change has been filed with and approved by the Commissioner). |
| [3](#co_fnRef_I7cee8b72d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, Md. Ins. Code Ann. § 11-403(a)(2); 40 Pa. Cons. Stat. § 910-37(f) (1992). |
| [4](#co_fnRef_I7cee8b73d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12401.8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.8&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-37(g). |
| [5](#co_fnRef_I7ceeb280d6ee11ea8f41e1f6f2aa78) | *See* [§ 9:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a12&originatingDoc=If4f5123c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussing Non-imputation endorsements. |
| [6](#co_fnRef_I7ceeb282d6ee11ea8f41e1f6f2aa78) | Pedowitz, Lawyers and Title Insurance, in ABA Real Prop. Prob. & Tr. L. Sec., Attorneys’ Role in Title Insurance A, 9–10 (1990). |
| [7](#co_fnRef_I7ceeb283d6ee11ea8f41e1f6f2aa78) | Pedowitz, Lawyers and Title Insurance, in ABA Real Prop. Prob. & Tr. L. Sec., Attorneys’ Role in Title Insurance A, 9–10 (1990). |

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2 Title Ins. Law § 18:24 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:24. Rate regulation—Rating organizations

Many states authorize the formation of title insurance rating organizations, also called rating bureaus.[1](#co_footnote_I7cfa4b40d6ee11ea8f41e1f6f2a) The rating organizations then promulgate rates for different classes of policies or risks and make rate filings and/or form filings. To encourage uniform administration of title insurance rate and form regulations, many states expressly permit exchange of information and consultation between state regulatory officials, persons, and entities in the title insurance business and title insurance rating organizations.[2](#co_footnote_I7cfa4b41d6ee11ea8f41e1f6f2a) Such statutory permission is important in helping title insurers who are involved in cooperative rate-making to establish the state action exemption to federal antitrust liability. See [§§ 15:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a1&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) Usually, after becoming a member of or subscriber to a rating organization, a title insurer may fulfill form filing or rate filing requirements by using the rates or forms made by the organization.[3](#co_footnote_I7cfa7251d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7cfa4b40d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. Ann. § 20-361](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-361&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Colo. Bull. 2-88, 1-91; Conn. Bull. T-3-91 (if title insurance industry elects to form a rating organization and apply for a license, a public hearing will be conducted so that all interested parties may have an opportunity to present their viewpoints—the granting of a license to a title insurance rating organization would not preclude insurers from submitting independent rate filings or deviations from renewal rates produced by the rating organization); [Del. Code Ann. tit. 18, §§ 2502](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2502&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2511](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2511&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2712(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2712&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code Ann. § 41-2712](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2712&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 11-218; [Mich. Comp. Laws Ann. § 500.7310](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7310&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.098](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.098&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.130&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may subscribe and use the services of a title insurance rating organization); [N.J. Stat. Ann. 17:46B-46](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-46&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Galiano v. Fidelity Nat. Title Ins. Co., 684 F.3d 309 (2d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028097256&pubNum=0000506&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) citing [N.Y. Ins. Law § 2313(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS2313&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (defining “rate service organization”); [Ohio Rev. Code Ann. § 3935.06](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.06&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and *see generally* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 737.350](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS737.350&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-41; [Tenn. Code Ann. § 56-35-132](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-132&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. Ann. § 26-23-332](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-332&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7cfa4b41d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.410(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.410&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12401.4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.4&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-4-409](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-4-409&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [McCray v. Fidelity Nat. Title Ins. Co., 682 F.3d 229, 2012-1 Trade Cas. (CCH) ¶ 77922 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904752&pubNum=0000506&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing [Del. Code Ann. tit. 18, §§ 2502](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2502&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2526](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2526&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [24-A Me. Rev. Stat. Ann. §§ 2302](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS2302&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2324](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS2324&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 11-406; [Mich. Comp. Laws §§ 500.2446](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.2446&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [500.7310](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7310&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [In re New Jersey Title Ins. Litigation, 683 F.3d 451, 2012-1 Trade Cas. (CCH) ¶ 77921 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904745&pubNum=0000506&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing [N.J. Stat. Ann. § 17:46B-42(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-42&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3935.10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.10&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and *see generally* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-46(c); [S.D. Codified Laws Ann. § 58-25-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-14&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-117](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-117&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4615](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4615&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (any two or more licensed title insurance companies may act in concert with each other and with others with respect to making risk rates or preparing forms, underwriting rules and practices and other information). |
| [3](#co_fnRef_I7cfa7251d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. Ann. § 20-376](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-376&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Conn. Bull. T-3-91 (if a rating organization is licensed and has filed appropriate rates, a title insurance company will be permitted to adopt those rates); [Idaho Code § 41-2712](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2712&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws §§ 500.7310](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7310&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [500.2401(g)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.2401&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [500.2406(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.2406&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1999](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1999&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.130&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may subscribe and use the services of a title insurance rating organization); [N.J. Stat. Ann. 17:46B-42](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-42&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3935.04](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.04&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and *see generally* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-37; [Tenn. Code Ann. §§ 56-35-111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-111&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [56-35-132](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-132&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4615(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4615&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-332](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-332&originatingDoc=If4f5123f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:25 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:25. Rate regulation—Enforcement procedures

Enforcement of filed rate schedules may be accomplished both by regulatory officials conducting periodic audits to assess title insurers’ compliance and by officials responding to third parties’ complaints and imposing penalties. Penalties vary for noncompliance with a prevailing filed rate schedule. In Massachusetts, the regulatory agency may revoke or suspend a foreign insurer’s license.[1](#co_footnote_I7d074390d6ee11ea8f41e1f6f2a) In Arizona, title insurers found deviating from their effective rates will first be fined a civil penalty. If, after a hearing, the title insurer is found to have engaged in a rating violation, the director may order an additional civil penalty, “order the title insurance agent to cease and desist from the act or practice,” and/or revoke the insurance agent’s license or suspend the insurer’s certificate of authority.[2](#co_footnote_I7d074391d6ee11ea8f41e1f6f2a) Missouri statutes provide for [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) C violation penalties, which consist of a monetary fine up to $100, suspension or revocation of the insurer’s license, or both the fine and suspension or revocation, when regulatory officials believe that a title insurer has violated the prevailing rate schedule.[3](#co_footnote_I7d074392d6ee11ea8f41e1f6f2a)

If it is a title insurer’s proposed rate filing that is being protested, the state regulatory agency is required to give notice to the insurer, rating bureau, or other filer of the reasons for the agency’s disapproval of the rate filing. If the title insurer or other filer so requests, the regulatory agency must hold a hearing. In some states, hearings may be requested by any member of the public who feels aggrieved by the rate filing;[4](#co_footnote_I7d074393d6ee11ea8f41e1f6f2a) in other states, only a title insurer or title insurance rating bureau may request that the regulatory agency hold a hearing on the matter.[5](#co_footnote_I7d076aa0d6ee11ea8f41e1f6f2a) In Texas, the commissioner must hold hearings before changing premium rates and biennially to consider any matters related to title insurance regulation that a company or person requests.[6](#co_footnote_I7d076aa1d6ee11ea8f41e1f6f2a)

In California, if any rate schedules filed do not comply with state regulations, notice to the insurer will be given to correct any unintentional violations within a specified period after receiving the notice.[7](#co_footnote_I7d076aa2d6ee11ea8f41e1f6f2a) If the insurer fails to comply, the regulatory agency will give notice of and hold a public hearing.[8](#co_footnote_I7d076aa3d6ee11ea8f41e1f6f2a) To assure compliance, California law also provides for the insurance commissioner to examine any title insurer, abstract company, escrow company controlled by a title insurer and advisory organization for title insurers as often as is necessary to assure its compliance with rate schedules.[9](#co_footnote_I7d076aa4d6ee11ea8f41e1f6f2a) No complaint is needed to set such review in motion.

Rate regulations often provide that only the insurance regulator may enforce them against a title insurer.[10](#co_footnote_I7d076aa5d6ee11ea8f41e1f6f2a) To claim a private right of action against an insurer for charging more than the rate permitted under the regulations, an insured would have to show clear evidence of a legislative intent to impose civil liability for a violation.[11](#co_footnote_I7d076aa6d6ee11ea8f41e1f6f2a)

Insureds generally have failed as well with claims against title insurers under the Real Estate Settlement Procedures Act[12](#co_footnote_I7d0791b0d6ee11ea8f41e1f6f2a) for charging rates in excess of the amount called for in the state’s published rate manual. The most common facts have involved title insurers charging standard premiums for title insurance policies when either a discounted “re-issue” or “refinance” rate should have been charged pursuant to state regulations.[13](#co_footnote_I7d0791b1d6ee11ea8f41e1f6f2a) Courts dismissing such claims have noted, however, that insureds might be able to bring common law causes of action when a title insurer has charged more than the rate allowed by applicable regulations. [Section 18:26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a26&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) further discusses the availability of common law remedies like money had and received, unjust enrichment, breach of implied contract, or misrepresentation.

Whether the “filed rate doctrine” or the “state action doctrine” are defenses for title insurers to insureds’ claims are considered *infra* §§ [15:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a10&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [15:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a13&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§ 21:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a11&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[14](#co_footnote_I7d07b8c3d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d074390d6ee11ea8f41e1f6f2aa78) | [Mass. Gen. L. ch. 175, § 5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S5&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d074391d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. § 20-379](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-379&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (2006). |
| [3](#co_fnRef_I7d074392d6ee11ea8f41e1f6f2aa78) | [Mo. Rev. Stat. §§ 381.032](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.032&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [381.045](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.045&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (the director may also impose additional penalties provided for in the code). |
| [4](#co_fnRef_I7d074393d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. § 20-378(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-378&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12414.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.13&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2707 (2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2707&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 11-314 (2006); [Mo. Rev. Stat. § 381.095](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.095&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-45(c) (2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-45&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-9&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (any person aggrieved by an order of an agency promulgating rates has rights to review and appeal); [Ohio Rev. Code Ann. § 3935.09](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3935.09&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (every rating bureau and insurer which makes its own rates must provide reasonable means for a hearing for a person aggrieved by rate-making; person aggrieved may appeal to the agency after the insurer or bureau takes action) and *see generally* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. §§ 910-44, 910-49 (every rating bureau and insurer which makes its own rates must provide reasonable means for a hearing for a person aggrieved by rate-making; person aggrieved may appeal to the agency after the insurer or bureau takes action; aggrieved persons have a right to file a complaint with the agency); [Vt. Stat. Ann. tit. 8, § 4704](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000883&cite=VT8S4704&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (2006). |
| [5](#co_fnRef_I7d076aa0d6ee11ea8f41e1f6f2aa78) | [Tenn. Code Ann. § 56-35-111(d)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-111&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7d076aa1d6ee11ea8f41e1f6f2aa78) | [Tex. Ins. Code Ann. §§ 2703.201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.201&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [2703.203](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2703.203&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7d076aa2d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12414.14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.14&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7d076aa3d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12414.15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.15&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7d076aa4d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code §§ 12414.20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.20&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [12414.21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.21&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Cal. Ins. Code §§ 12414.22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.22&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [12414.23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12414.23&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), which require the licensee’s officers, managers, agents, and employees to be examined under oath and to “exhibit all books, records, accounts, documents, or agreements governing their methods of operation, together with all data, statistics, and information of every kind and character collected or considered by such persons or entities in the conduct of the operations to which such examination relates” and bear the reasonable cost thereof. |
| [10](#co_fnRef_I7d076aa5d6ee11ea8f41e1f6f2aa78) | *See e.g.,* [Ala. Code § 27-25-9(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-25-9&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I7d076aa6d6ee11ea8f41e1f6f2aa78) | [Morrisette v. NovaStar Home Mortg., Inc., 484 F. Supp. 2d 1227 (S.D. Ala. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012087865&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [284 Fed. Appx. 729 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016454490&pubNum=0006538&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hancock v. Chicago Title Ins. Co., 635 F. Supp. 2d 539 (N.D. Tex. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019361650&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I7d0791b0d6ee11ea8f41e1f6f2aa78) | Chapter 21 *infra* considers applicability of the Real Estate Settlement Procedures Act to title insurance agents and underwriters. |
| [13](#co_fnRef_I7d0791b1d6ee11ea8f41e1f6f2aa78) | *See e.g.,* [Arthur v. Ticor Title Ins. Co. of Florida, 569 F.3d 154 (4th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019157964&pubNum=0000506&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hazewood v. Foundation Financial Group, LLC, 551 F.3d 1223 (11th Cir.2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017665748&pubNum=0000506&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lewis v. First American Title Ins. Co., 265 F.R.D. 536 (D. Idaho 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021439889&pubNum=0000344&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); and [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Randleman v. Fidelity Nat. Title Ins. Co., 264 F.R.D. 298 (N.D. Ohio 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019858850&pubNum=0000344&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [646 F.3d 347, 79 Fed. R. Serv. 3d 828 (6th Cir. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025286585&pubNum=0000506&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hancock v. Chicago Title Ins. Co., 635 F. Supp. 2d 539 (N.D. Tex. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019361650&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hoving v. Lawyers Title Ins. Co., 256 F.R.D. 555 (E.D. Mich. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018532909&pubNum=0000344&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alberton v. Commonwealth Land Title Ins. Co., 247 F.R.D. 469 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015081109&pubNum=0000344&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Woodard v. Fidelity Nat. Title Ins. Co., 2008 WL 5737364 (D.N.M. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018394718&pubNum=0000999&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Commonwealth Land Title Ins. Co. v. Higgins, 975 So. 2d 1169 (Fla. Dist. Ct. App. 1st Dist. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015410884&pubNum=0000735&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Chesner v. Stewart Title Guar. Co., 2008 WL 553773 (N.D. Ohio 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015382676&pubNum=0000999&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kingsberry v. Chicago Title Ins. Co., 586 F. Supp. 2d 1242 (W.D. Wash. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017270599&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), amended in part on other grounds, [586 F. Supp. 2d 1248 (W.D. Wash. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017451893&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Morrisette v. NovaStar Home Mortg., Inc., 484 F. Supp. 2d 1227 (S.D. Ala. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012087865&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [284 Fed. Appx. 729 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016454490&pubNum=0006538&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158 (N.D. Ohio, 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cohen v. Chicago Title Ins. Co., 242 F.R.D. 295 (E.D. Pa. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011916462&pubNum=0000344&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mitchell-Tracey v. United General Title Ins. Co., 237 F.R.D. 551 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010371220&pubNum=0000344&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Williams v. Saxon Mortg. Services, Inc., 2007 WL 1845642 (S.D. Ala. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012566032&pubNum=0000999&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I7d07b8c3d6ee11ea8f41e1f6f2aa78) | *See* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Blaylock v. First American Title Ins. Co., 504 F. Supp. 2d 1091 (W.D. Wash. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012920558&pubNum=0004637&originatingDoc=If4f512426fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:26 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:26. Rate regulation—False and misleading information involving rates

Many states specifically prohibit a title insurer from willfully withholding or giving false or misleading information to the state regulatory agency with respect to title insurance rates.[1](#co_footnote_I7d154d50d6ee11ea8f41e1f6f2a) As noted in [§ 18:25](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a25&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), however, often only the insurance regulator can pursue a title insurer for a violation of such regulations.

Nevertheless, general consumer protection statutes[2](#co_footnote_I7d157461d6ee11ea8f41e1f6f2a) and common law might form the basis of a private cause of action for a title insurer’s misrepresentation of title insurance rates. The U.S. District Court for the Northern District of Ohio has recognized causes of action for fraud, failure to disclose, breach of an implied contract, and breach of the implied covenant of good faith and fair dealing where the underwriter charged the full rate for an original [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) in refinancing transactions, rather than the discounted rate appropriate under state regulations.[3](#co_footnote_I7d157463d6ee11ea8f41e1f6f2a) The court held that mortgagors properly pled claims for fraud and failure to disclose because a jury could reasonably decide that the underwriter breached a duty to disclose that the mortgagors were entitled to the reissue rate rather than the full rate that the underwriter represented mortgagors owed.[4](#co_footnote_I7d159b70d6ee11ea8f41e1f6f2a) The court also held that the mortgagors properly alleged the existence of an implied contract to pay a premium for the underwriter’s provision of title insurance to their mortgagees and that an implied term of that contract was that the underwriter would charge the legal rate for the provision of that insurance.[5](#co_footnote_I7d159b71d6ee11ea8f41e1f6f2a)

Conversely, where an action for negligent misrepresentation required, not merely a failure to disclose, but a false statement, the court dismissed insureds’ complaint alleging only that the HUD-1 form stated too high a premium, and not a premium other than what the insurer actually charged.[6](#co_footnote_I7d159b72d6ee11ea8f41e1f6f2a) Another court has found an allegation of an overcharge for title insurance was insufficient to state an unjust enrichment claim.[7](#co_footnote_I7d159b73d6ee11ea8f41e1f6f2a)

As a practical matter, damages measured by the rate differential would never be enough to cover the cost of attorneys’ fees and litigation to pursue it unless insureds who did not receive the discounted rate may sue as a [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). To bring a class action against a title insurer for unjust enrichment, violation of state consumer protection laws, or other grounds when the title insurer failed to provide an appropriately discounted title insurance rate, insureds must establish the elements necessary for class certification under [Federal Rules of Civil Procedure, Rule 23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[8](#co_footnote_I7d159b74d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d154d50d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.420](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.420&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1997(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1997&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. 17:46B-50](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-50&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-47; [S.D. Codified Laws Ann. § 58-25-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-15&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d157461d6ee11ea8f41e1f6f2aa78) | *See e.g.,* [Hoving v. Lawyers Title Ins. Co., 256 F.R.D. 555 (E.D. Mich. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018532909&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alberton v. Commonwealth Land Title Ins. Co., 247 F.R.D. 469 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015081109&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Woodard v. Fidelity Nat. Title Ins. Co., 2008 WL 5737364 (D.N.M. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018394718&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cohen v. Chicago Title Ins. Co., 242 F.R.D. 295 (E.D. Pa. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011916462&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also infra* [§§ 21:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a1&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) regarding the Real Estate Settlement Procedures Act’s prohibitions against inflating fees in order to pay for referrals. |
| [3](#co_fnRef_I7d157463d6ee11ea8f41e1f6f2aa78) | [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158 (N.D. Ohio, 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Randleman v. Fidelity Nat. Title Ins. Co., 264 F.R.D. 298 (N.D. Ohio 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019858850&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [646 F.3d 347, 79 Fed. R. Serv. 3d 828 (6th Cir. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025286585&pubNum=0000506&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hoving v. Lawyers Title Ins. Co., 256 F.R.D. 555 (E.D. Mich. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018532909&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hancock v. Chicago Title Ins. Co., 635 F. Supp. 2d 539 (N.D. Tex. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019361650&pubNum=0004637&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Woodard v. Fidelity Nat. Title Ins. Co., 2008 WL 5737364 (D.N.M. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018394718&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Commonwealth Land Title Ins. Co. v. Higgins, 975 So. 2d 1169 (Fla. Dist. Ct. App. 1st Dist. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015410884&pubNum=0000735&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alberton v. Commonwealth Land Title Ins. Co., 247 F.R.D. 469 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015081109&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Chesner v. Stewart Title Guar. Co., 2008 WL 553773 (N.D. Ohio 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015382676&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cohen v. Chicago Title Ins. Co., 242 F.R.D. 295 (E.D. Pa. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011916462&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Patino v. Lawyers Title Ins. Corp., 2007 WL 4687748 (N.D. Tex. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014701266&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding allegations sufficed to state an unjust enrichment claim and a claim for money had and received); [Mitchell-Tracey v. United General Title Ins. Co., 237 F.R.D. 551 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010371220&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7d159b70d6ee11ea8f41e1f6f2aa78) | [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158, \*3 (N.D. Ohio 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See, generally,* [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7d159b71d6ee11ea8f41e1f6f2aa78) | [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158, \*2 (N.D. Ohio 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7d159b72d6ee11ea8f41e1f6f2aa78) | [Arthur v. Ticor Title Ins. Co. of Florida, 569 F.3d 154, n.3 (4th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019157964&pubNum=0000506&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7d159b73d6ee11ea8f41e1f6f2aa78) | [Hazewood v. Foundation Financial Group, LLC, 551 F.3d 1223 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017665748&pubNum=0000506&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* [Patino v. Lawyers Title Ins. Corp., 2007 WL 4687748 (N.D. Tex. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014701266&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding allegations sufficient to state an unjust enrichment claim and a claim for money had and received). |
| [8](#co_fnRef_I7d159b74d6ee11ea8f41e1f6f2aa78) | *See* [Boucher v. First American Title Ins. Co., 2012 WL 3023316 (W.D. Wash. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028274994&pubNum=0000999&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Scott v. First American Title Ins. Co., 276 F.R.D. 471 (E.D. Ky. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026075782&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that putative class of insured homeowners who did not receive appropriately discounted title insurance rate when refinancing failed to meet the commonality or predominance requirements for certification of a class action); [Corwin v. Lawyers Title Ins. Co., 276 F.R.D. 484, 489–91, 80 Fed. R. Serv. 3d 56 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025822444&pubNum=0000344&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_344_489&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_489) (holding that insured plaintiffs failed to satisfy [Rule 23(a)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=I4ac4a9d1990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))’s commonality requirement and (b)(3)’s predominance requirement). |

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2 Title Ins. Law § 18:27 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:27. Financial regulation

Three major types of financial regulations exist. First, to ensure that funds will be available for payment of insureds’ losses, most states have minimum capitalization, paid-in surplus and reserve fund requirements applicable to title insurance underwriters. Second, about half the states also regulate title insurance underwriters’ investments. A third common type of regulation requires title insurers to keep escrow, settlement, closing, and title indemnification funds in accounts and records separate from their operating, surplus, and reserve funds.[1](#co_footnote_I7d1b67d0d6ee11ea8f41e1f6f2a) Such funds are the property of the persons entitled thereto under the escrow, settlement, closing, or title indemnification agreement and can be used only in accordance with the terms under which the funds were accepted.[2](#co_footnote_I7d1b67d1d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d1b67d0d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 18(a) to (c). |
| [2](#co_fnRef_I7d1b67d1d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 18(a) to (c). |

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2 Title Ins. Law § 18:28 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:28. Financial regulation—Minimum capital or surplus requirements

Most states have capital and/or surplus requirements that a title insurer must meet before being authorized to transact the business of title insurance.[1](#co_footnote_I7d2504c0d6ee11ea8f41e1f6f2a) States’ capital requirements mandate that a minimum amount of the insurer’s stock be held in the insurer’s treasury. States’ “surplus as regards policyholder” or “reserve for losses” requirements direct that a title insurer have a minimum amount in excess of its total debts that will be available to pay insureds’ claims.[2](#co_footnote_I7d2504c1d6ee11ea8f41e1f6f2a)

Some states’ statutes arrive at a title insurer’s required amount of surplus by taking a percentage of the insurer’s paid-in capital.[3](#co_footnote_I7d252bd0d6ee11ea8f41e1f6f2a) Others state a set amount of surplus which must be maintained.[4](#co_footnote_I7d252bd1d6ee11ea8f41e1f6f2a)

Required capital and surplus funds are not sufficiently large to fully assure that money will be available to pay all claims. In most states, they would be depleted if a title insurer had even a few large dollar losses. For example, Mississippi requires capital of $150,000 and a surplus of $75,000.[5](#co_footnote_I7d252bd2d6ee11ea8f41e1f6f2a) Utah only requires minimum capital of $200,000.[6](#co_footnote_I7d252bd3d6ee11ea8f41e1f6f2a) For this reason, states also must restrict the size of any single risk that a single title insurance underwriter may accept and title insurers must utilize reinsurance and coinsurance agreements. See §§ [18:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a34&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [18:37](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a37&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:40](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a40&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

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| **Footnotes** | |
| [1](#co_fnRef_I7d2504c0d6ee11ea8f41e1f6f2aa78) | [Ark. Code Ann. § 23-63-205](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-205&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (to qualify for and maintain authority to transact title insurance, the insurer shall possess and maintain in cash and marketable securities unimpaired paid-in capital of $250,000); [Cal. Ins. Code § 12359](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12359&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurer to have paid-in capital stock of $500,000); [Colo. Rev. Stat. § 10-3-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-3-201&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (must possess minimum capital or guaranty fund and an accumulated surplus which combined are at least equal to $750,000); [Del. Code Ann. tit. 18, § 511](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S511&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer shall possess and maintain in cash or cash equivalents unimpaired paid-in capital stock of $250,000 and free surplus of $125,000); [Fla. Stat. Ann. §§ 624.407](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.407&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [624.408](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.408&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (to receive authority to transact title insurance, a new insurer must possess surplus in the amount of $2.5 million or 10% of the insurer’s total liabilities, whichever is greater, not to exceed $100 million; to maintain certificate of authority to transact title insurance, insurer must maintain surplus of at least $1.5 million or 10% of total liabilities, whichever is greater); [Haw. Rev. Stat. § 431:20-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-107&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must have paid-in and maintained capital of at least $400,000).  [Idaho Code § 41-313](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-313&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires foreign and new domestic title insurers to possess and maintain unimpaired paid-up capital stock of $500,000); [Ind. Code § 27-7-3-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-5&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires paid-in capital stock of at least $100,000); [Ky. Rev. Stat. Ann. § 304.3-120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-120&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires minimum capital stock of $1 million and initial free surplus of $2 million); [La. Rev. Stat. Ann. § 22:71](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a71&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance companies licensed before 9-1-85 to have paid-in capital of $50,000 and minimum surplus of $25,000; requires title insurance companies licensed on or after 9-1-85 to have paid-in capital of $100,000 and minimum surplus of $200,000); [La. Rev. Stat. Ann. § 22:71.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a71.1&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurers licensed on or after 9-1-89 to have paid in capital of $100,000, minimum surplus of $400,000, and operating surplus of $500,000); [Mich. Comp. Laws § 500.5014](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.5014&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (par value of capital stock must be at least $1); [Mich. Comp. Laws § 500.5216](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.5216&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (reduction of capital is allowed by amendment of articles of incorporation, as long as assets remaining are sufficient to pay debts; reduction of capital may be effected by reducing outstanding shares, stock split).  [Miss. Code Ann. § 83-15-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-5&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (capital of $150,000 and surplus of $75,000); [Mo. Rev. Stat. § 381.062](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.062&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires minimum paid-in capital of $400,000 and paid-in initial surplus of $400,000); [N.H. Rev. Stat. Ann. § 416-A:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a5&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (minimum paid-in and maintained capital of $200,000 and paid-in surplus of $100,000); [N.J. Stat. Ann. 17:46B-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-7&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (paid-in and maintained capital of $500,000 and paid-in surplus of $250,000); [N.Y. Ins. Law § 6402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6402&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (paid-in capital of at least $500,000 and paid-in initial surplus of at least 50% of its paid-in capital); [N.D. Cent. Code § 26.1-20-02](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-02&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (domestic title insurance company must have $500,000 capital and $500,000 surplus in order to be incorporated); [Ohio Rev. Code Ann. § 3925.12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3925.12&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) ($30,000 paid-in capital and $45,000 contributed surplus required before incorporation; $120,000 paid-in capital and $180,000 contributed surplus required before commencing business); [Or. Rev. Stat. § 731.562](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.562&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must possess and maintain capital and/or surplus of not less than $2.5 million); [Tenn. Code Ann. § 56-35-112](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-112&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (paid-up capital stock of at least $100,000 and deposit of $100,000 for guaranty fund, and surplus to make the aggregate of surplus and capital not less than $500,000); [Tex. Ins. Code Ann. §§ 2551.053](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.053&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2553.002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2553.002&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (paid-up capital of at least $1 million and surplus of at least $1 million); [Utah Code Ann. § 31A-5-211](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-5-211&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (minimum capital of $200,000). |
| [2](#co_fnRef_I7d2504c1d6ee11ea8f41e1f6f2aa78) | Feinstein, The Role of the Lawyer, in ABA Real Prop. Prob. & Tr. L. Section, Title Insurance: The Lawyer’s Expanding Role, 238, 248–249 (1985). |
| [3](#co_fnRef_I7d252bd0d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-3-8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-3-8&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-63-207](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-207&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12370](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12370&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.3-120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-120&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 4-105; [Mont. Code Ann. § 33-2-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-110&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6402&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-5. |
| [4](#co_fnRef_I7d252bd1d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. Ann. § 20-210](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-210&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-72](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-72&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kan. Stat. Ann. § 40-1103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-1103&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.3-120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-120&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Rev. Stat. Ann. § 22:71](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a71&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 410](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS410&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-5&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.062](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.062&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 680A.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST680A.120&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a5&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-7&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-7-75](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-7-75&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.D. Cent. Code § 26.1-20-02](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-02&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3925.12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3925.12&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.C. Code Ann. § 38-9-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-9-10&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-6-23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-6-23&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-112](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-112&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Tex. Ins. [§ 2551.053](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.053&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-5-211](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-5-211&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-3-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-3-108&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7d252bd2d6ee11ea8f41e1f6f2aa78) | [Miss. Code Ann. § 83-15-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-5&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7d252bd3d6ee11ea8f41e1f6f2aa78) | [Utah Code Ann. § 31A-5-211](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-5-211&originatingDoc=If4f5124b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:29 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:29. Financial regulation—Deposits

To further assure that money will exist for payment of insureds’ claims, some states require title insurers to deposit amounts, usually either of capital or surplus, with the state regulatory agency.[1](#co_footnote_I7d322420d6ee11ea8f41e1f6f2a) Some of these statutes require cash deposits, while other states allow the deposits to be made in cash and securities. This may be called a “guaranty fund.” Generally, the deposits must be held on deposit for as long as the insurer has any outstanding liability.[2](#co_footnote_I7d324b30d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d322420d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-3-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-3-13&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (foreign title insurers must maintain a deposit of cash and securities with a value of at least $50,000 on deposit with a bank or trust in the state having capital and surplus of at least $500,000, domestic title insurers may maintain such a deposit); [Alaska Stat. § 21.66.020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.020&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires a guaranty fund deposit equal to 10% of the premiums received by insurer during the preceding year, up to $50,000 per year); [Ark. Code Ann. § 23-63-610](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-610&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires deposit of securities with a market value not less than $100,000); [Cal. Ins. Code § 12350](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12350&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must deposit $100,000 with insurance commissioner as a guarantee fund); [Colo. Rev. Stat. § 10-3-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-3-201&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (domestic title insurer must maintain a deposit of $750,000 in cash or securities representing the required minimal capital or guaranty fund and surplus); [Del. Code Ann. tit. 18, § 513](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S513&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (domestic title insurer must make and maintain a deposit in cash or securities of a fair market value not less than $25,000); [Haw. Rev. Stat. § 431:20-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-108&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires a guarantee fund deposit of $400,000 in cash or securities for the protection of holders and beneficiaries of title insurance policies); [Idaho Code § 41-2711](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2711&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance agent must file a $10,000 minimum security bond for each county in which it is licensed, increased in $10,000 increments for each additional escrow officer employed in the county, up to $50,000); [215 Ill. Comp. Stat. § 155/4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f4&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance company must, within 30 days after incorporation or licensing, deposit bonds and securities for the benefit of creditors in the amount of $50,000 plus $5,000 for each county in which policies are issued, up to a maximum deposit of $500,000); [Ind. Code § 27-7-3-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-7&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires deposit of $50,000 in securities out of a title insurance company’s capital or surplus; deposit is called the title insurance fund); [Ky. Rev. Stat. Ann. § 304.3-140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.3-140&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must maintain a deposit of cash or securities of fair market value not less than the minimum required capital stock as a guaranty fund as security for performance by the insurer of all its undertakings and liabilities under title policies); [La. Stat. Ann. §§ 22:901](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a901&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [22:1028](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a1028&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires a $100,000 deposit for domestic insurers and a $20,000 deposit for foreign or alien insurers, in money or approved bonds); [Mass. Gen. L. ch. 175, § 116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S116&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires guaranty fund to be set aside and invested, equaling not less than two-fifths of company’s capital and not less than $100,000; the fund is to be applied only to the payment of losses and expenses incurred on contracts); [Minn. Stat. § 68A.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS68A.01&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires setting apart a guaranty fund of $100,000 or an amount equal to two-fifths of insurer’s capital stock, whichever is greater); [Mont. Code Ann. § 33-2-111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-111&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires deposit of $100,000); [N.J. Rev. Stat. § 17:46B-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-7&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires $100,000 security deposit); [N.D. Cent. Code § 26.1-20-03](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-03&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (paid-in surplus shall be deposited in a guaranty fund to pay losses and loss expenses on contracts); [Ohio Rev. Code Ann. § 3953.06](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.06&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires $50,000 bond deposit prior to issuing any title insurance policy); [Or. Rev. Stat. § 731.624](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.624&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (foreign or alien title insurers must deposit with state treasurer $100,000); [Tenn. Code Ann. §§ 56-35-112](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-112&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [56-35-202](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-202&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (deposit of $100,000 for guaranty fund; bond of $25,000); 2551.201, 2551.202 (deposit, not to exceed $100,000, in amount equal to one-fourth of authorized capital; a title insurer who has such a deposit in another state to secure all policyholders “wherever located” does not have to make a duplicate deposit with the Texas Insurance Commission. |
| [2](#co_fnRef_I7d324b30d6ee11ea8f41e1f6f2aa78) | *See, e.g.,* [Ala. Code § 27-6-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-6-15&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-108(f)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-108&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (deposit shall be retained until all outstanding liabilities on title insurance policies or reinsurance assumed by the title insurer have been discharged by reinsurance or otherwise); [N.J. Rev. Stat. § 17:46B-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-7&originatingDoc=If4f5124e6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:30 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:30. Financial regulation—Reserves—Unearned premium reserves (risk reserves)

Most states require title insurers to establish and maintain “unearned premium reserves” in order to assure that money will be available to pay policyholders’ claims.[1](#co_footnote_I7d4250c0d6ee11ea8f41e1f6f2a) Several states make no distinction between a guaranty fund and an unearned premium reserve fund and require insurers to “maintain a guaranty fund or unearned premium reserve.”[2](#co_footnote_I7d4277d0d6ee11ea8f41e1f6f2a) An underwriter’s unearned premium reserve cannot be used for dividends and cannot be reached by shareholders or creditors.[3](#co_footnote_I7d4277d1d6ee11ea8f41e1f6f2a) Usually the unearned premium reserve is used in the event of insurer insolvency, liquidation, or dissolution, to purchase reinsurance of the liability of the title insurer upon all outstanding title insurance policies.[4](#co_footnote_I7d4277d2d6ee11ea8f41e1f6f2a)

The phrase “unearned premium reserve” comes from the general insurance industry. With an auto or homeowner’s policy, the unearned premium is that portion of the premium which the company has not yet had time to earn and which must be returned to the insured if the policy is cancelled.[5](#co_footnote_I7d4277d3d6ee11ea8f41e1f6f2a) This portion of the premium covers the future risk and is said to be “unearned” at the time part of the premium is placed in the reserve fund.[6](#co_footnote_I7d4277d4d6ee11ea8f41e1f6f2a) The phrase is somewhat of a misnomer in the title insurance context since a one-time premium pays for insurance coverage as long as the insured owns the insured property interest, whether that is a few months or 50 years. If the insured sells the property, no portion of the title insurance premium is refunded.

In many states, the amount required to be placed in the unearned premium reserve is computed as a percentage of the total amount of risk premiums written by a title insurer in a certain period of time.[7](#co_footnote_I7d429ee0d6ee11ea8f41e1f6f2a) As shown in the note to the preceding paragraph, in many states, 10% of either the premium charged or of the total amount of risk premium must be reserved. In some states, the unearned premium reserve may also be available to pay claims for losses sustained by policyholders, where the claims are pending or arising up to the time reinsurance is effected.[8](#co_footnote_I7d429ee1d6ee11ea8f41e1f6f2a) In Colorado, the title insurer must pay into an unearned premium reserve fund one dollar for each policy issued *plus* 15 cents for each $1,000 face amount of net retained liability.[9](#co_footnote_I7d429ee2d6ee11ea8f41e1f6f2a) Kansas and New Jersey both require $1.50 for each policy issued *and* 12 1/2 cents for each $1,000 of net retained liability.[10](#co_footnote_I7d429ee3d6ee11ea8f41e1f6f2a) In other states, the amount required to be placed in the unearned premium reserve is computed as a set sum per $1,000 of the title insurer’s net retained liability.[11](#co_footnote_I7d429ee4d6ee11ea8f41e1f6f2a) In many states, once a reserve fund has been created at the appropriate level, the reserve applicable to each title insurance contract may be reduced proportionally each subsequent year. In this way a portion of the premium reserved is returned to the title insurer as the risk period progresses.

The Model Title Insurance Act, developed by the National Association of Insurance Commissioners, would require domestic title insurers to deposit unearned portions of the title insurance premium into what the Act calls a “reinsurance reserve.”[12](#co_footnote_I7d42c5f0d6ee11ea8f41e1f6f2a) Four states have adopted this approach and use the term “reinsurance reserve” for a title insurer’s unearned premium reserve.[13](#co_footnote_I7d42c5f1d6ee11ea8f41e1f6f2a) Under the Model Act, these funds are not subject to distribution to an insurer’s creditors or shareholders until all insureds and reinsurers with claims are paid.[14](#co_footnote_I7d42c5f2d6ee11ea8f41e1f6f2a) A foreign title insurer would be required to maintain at least the same reserves as domestic title insurers on title insurance policies issued in the state where the property is situated.[15](#co_footnote_I7d42c5f3d6ee11ea8f41e1f6f2a) Under the Model Act, the foreign title insurer’s reserves need not be maintained in the state where the land is located so long as they are on reserve in the state in which the foreign title insurer is domiciled.[16](#co_footnote_I7d42c5f4d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d4250c0d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-36-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-36-2&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.18.073](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.18.073&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12381](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12381&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 1109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1109&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. §§ 625.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.051&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [625.111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.111&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-10-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-10-10&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-114](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-114&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-611](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-611&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f11&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code § 27-7-3-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-9&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kan. Stat. Ann. §§ 40-234b](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-234B&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [40-234c](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-234C&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.6-080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.6-080&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 5-206; [Mich. Comp. Laws § 500.7305](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7305&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. § 68A.02](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS68A.02&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-9&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.072](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.072&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-2-517](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-517&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1988](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1988&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. §§ 692A.160](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.160&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.170](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.170&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. §§ 416-A:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a9&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [416-A:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a10&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. §§ 17:46B-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-14&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:18-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a18-13&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-8-11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-8-11&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. §§ 58-26-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-20&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [58-26-25](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-25&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.11&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 733.090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS733.090&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-14; [S.C. Code Ann. § 38-75-920](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-920&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-25-22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-22&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-115](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-115&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.251](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.251&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-17-408](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-17-408&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4610.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4610.1&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code § 48.29.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.120&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“special reserve fund”); [Wyo. Stat. § 26-23-309](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-309&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d4277d0d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Del. Code Ann. tit. 18, § 1109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1109&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (10% of risk portion of premiums written in calendar year is to be assigned to the reserve; during each of the 20 years following issuance of the contract, reserve may be reduced by 5% of original amount); [Fla. Stat. Ann. § 625.111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.111&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (for policies issued after July 1, 1999, the unearned premium reserve must not be less than the sum of: (a) “[a] reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999;” (b) an amount not less than a reservation of 30 cents for each $1,000 face amount of net retained liability; and (c) “an additional amount, if deemed necessary by a qualified actuary”); [Ga. Code Ann. § 33-10-10(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-10-10&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (10% of premiums charged); [Ky. Rev. Stat. Ann. § 304.6-080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.6-080&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (10% of total amount of risk factor); Md. Ins. Code Ann. § 5-206 (10% of total amount of risk premiums written in calendar year); [Mont. Code Ann. § 33-2-517](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-517&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (10% of total amount of risk premiums). |
| [3](#co_fnRef_I7d4277d1d6ee11ea8f41e1f6f2aa78) | Feinstein, The Role of the Lawyer, in ABA Real Prop. Prob. & Tr. L. Section, Title Insurance: The Lawyer’s Expanding Role, 238, 248 (1985). |
| [4](#co_fnRef_I7d4277d2d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Haw. Rev. Stat. § 431:20-115](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-115&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7d4277d3d6ee11ea8f41e1f6f2aa78) | *See* [Superior Life Ins. Co. v. U.S., 322 F. Supp. 921, 926, 71-1 U.S. Tax Cas. (CCH) P 9332, 27 A.F.T.R.2d 71-1112 (D.S.C. 1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971104447&pubNum=0000345&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_926&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_926), judgment rev’d on other grounds, [462 F.2d 945, 72-1 U.S. Tax Cas. (CCH) P 9471, 29 A.F.T.R.2d 72-1370 (4th Cir. 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972110737&pubNum=0000350&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Downey v. Humphreys, 102 Cal. App. 2d 323, 227 P.2d 484, 488 (2d Dist. 1951)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1951113166&pubNum=0000661&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_488&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_488); [Aetna Ins. Co. v. Hyde, 315 Mo. 113, 285 S.W. 65 (1926)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1926118649&pubNum=0000712&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7d4277d4d6ee11ea8f41e1f6f2aa78) | [Superior Life Ins. Co. v. U.S., 322 F. Supp. 921, 926, 71-1 U.S. Tax Cas. (CCH) P 9332, 27 A.F.T.R.2d 71-1112 (D.S.C. 1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971104447&pubNum=0000345&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_926&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_926), judgment rev’d on other grounds, [462 F.2d 945, 72-1 U.S. Tax Cas. (CCH) P 9471, 29 A.F.T.R.2d 72-1370 (4th Cir. 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972110737&pubNum=0000350&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7d429ee0d6ee11ea8f41e1f6f2aa78) | [Ala. Code § 27-36-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-36-2&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is originally 10% of the total amount of the risk premiums written in the calendar year for title insurance contracts; each of 20 years after the date the contract was issued, the reserve applicable to the contract is reduced by 5% of the original amount of the reserve); [Cal. Ins. Code § 12382.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12382.2&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 1109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1109&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is originally 10% of the total amount of the risk premiums written in the calendar year for title insurance contracts; each of 20 years after the date the contract was issued, the reserve applicable to the contract is reduced by 5% of the original amount of the reserve); [Ga. Code Ann. § 33-10-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-10-10&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is originally 10% of the total amount of the risk premiums written in the calendar year for title insurance contracts; each of 20 years after the date the contract was issued, the reserve applicable to the contract is reduced by 5% of the original amount of the reserve); [Idaho Code § 41-611](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-611&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code §§ 27-7-3-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-9&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [27-7-3-12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-12&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (reserve fund in an amount equal to 10% of the actual premiums collected during the preceding year until the fund totals $50,000); [Ky. Rev. Stat. Ann. § 304.6-080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.6-080&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is to be at least 10% of risk premiums collected; reduced by 5% each of the next 20 years); Md. Ins. Code Ann. § 5-206 (unearned premium reserve is originally 10% of the total amount of the risk premiums written in the calendar year for title insurance contracts; each of 20 years after the date the contract was issued, the reserve applicable to the contract is reduced in accordance with a specified formula); [Mich. Comp. Laws § 500.7305](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7305&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is the amount of the reserve on 1-1-67 and 5% of gross premiums received each month beginning 1-1-67); [Minn. Stat. § 68A.02](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS68A.02&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is 10% of premiums charged, reduced one-twentieth each year after); [Mont. Code Ann. § 33-2-517](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-517&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is originally 10% of the total amount of the risk premiums written in the calendar year for title insurance contracts; each of 20 years after the date the contract was issued, the reserve applicable to the contract is reduced by 5% of the original amount); [Nev. Rev. Stat. §§ 692A.160](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.160&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.170](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.170&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is the amount held in the reserve on 7-1-77 plus 5% of title insurance premiums collected each year); [N.J. Rev. Stat. § 17:18-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a18-13&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (during first 10 years of doing business shall set up and maintain a reserve equal to 3% of total gross premiums received; after first 10 years, shall set up and accumulate a reserve of 2% of total gross premiums received during the preceding month); [N.M. Stat. Ann. § 59A-8-11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-8-11&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is 10% of gross risk premium; reduced by 5% every year); [N.Y. Ins. Law § 6405](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6405&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is $1.50 for each risk assumed plus 1/80th of 1% of the face amount of the insurance of each risk plus 3% of gross fees and premiums; title insurer must release from the reserve 5% of the amount added to the reserve during each year following the year the sum was added until the entire amount added has been released); [Ohio Rev. Code Ann. § 3953.11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.11&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is amount of the reserve on 12-12-67 and an amount equal to 10% of premiums received during the previous year, not to exceed a total of $250,000; reduced each year by 0.5% of the original premium until the total amount of the reserve is withdrawn); [Tenn. Code Ann. § 56-35-114](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-114&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is 10% of risk rates collected until reserve reaches $100,000). |
| [8](#co_fnRef_I7d429ee1d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Haw. Rev. Stat. § 431:20-115](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-115&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7d429ee2d6ee11ea8f41e1f6f2aa78) | [Colo. Rev. Stat. § 10-11-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-110&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7d429ee3d6ee11ea8f41e1f6f2aa78) | [Kan. Stat. Ann. § 40-234b](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-234B&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-15&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I7d429ee4d6ee11ea8f41e1f6f2aa78) | [Fla. Stat. Ann. § 625.111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.111&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must establish and maintain an unearned premium reserve in the amount of the unearned premium reserve as of 6-30-92 and 30 cents for each $1,000 of net retained liability under each title insurance policy on a single risk on or after 7-1-92); [215 Ill. Comp. Stat. § 155/11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f11&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must establish and maintain a premium reserve, calculated by the amount of reserve on 1-1-90 plus 12.5 cents for each $1,000 of net retained liability under each policy on a single risk after 1-1-90); [Mo. Rev. Stat. § 381.072](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.072&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is the amount of the reserve on 1-1-01 plus 15 cents for each $1,000 of net retained liability under each policy); [Neb. Rev. Stat. § 44-1988](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1988&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is the amount of the reserve on 9-13-97 with additions made out of total charges for title insurance policies and guarantees written, equal to the sum of the following: 25 cents per $1,000 of net retained liability for each title insurance policy under $500,000 and 12 cents per $1,000 of net retained liability for title insurance policies of $500,000 or greater; and 6% of escrow, settlement, and closing fees collected in contemplation of the issuance of title insurance policies or guarantees); 40 Pa. Cons. Stat. § 910-15 (unearned premium reserve is the amount of the reserve in 1963 plus $1 for each policy plus 10 cents for each $1,000 of net retained liability); [S.D. Codified Laws Ann. § 58-25-22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-22&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (statutory premium reserve equals the statutory premium reserve on 1-1-02 plus 24 cents for each $1,000 of net retained liability under each policy written for less than $500,000 after 1-1-02, and 12 cents for each $1,000 of net retained liability under each policy written for $500,000 or greater after 1-1-02.); [Tex. Ins. Code Ann. § 2551.253](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.253&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must add to unearned premium the following: out of total charges for policies written or assumed between 1-1-98 and 1-1-05, 25 cents for each $1,000 of net retained liability if the insurer had $250 million or more in direct written premiums for the most recent calendar year or 30 cents if title insurer had less than $250 million in written premiums; plus 18.5 cents per $1,000 of net retained liability for the most recent calendar year); [Utah Code Ann. § 31A-17-408](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-17-408&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is 10 cents for each $1,000 of net retained liability); [Va. Code Ann. § 38.2-4610.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4610.1&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve is the amount of the reserve on 6-30-86 plus $1.50 for each policy, plus 12.5 cents of each $1,000 of net retained liability for each policy); [Wash. Rev. Code § 48.29.120](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.120&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unearned premium reserve must consist of the “special reserve fund” required prior to 7-24-05 plus 15 cents per $1,000 of net retained liability for policies under $500,000 and 10 cents per $1,000 of net retained liability for policies of $500,000 or greater). |
| [12](#co_fnRef_I7d42c5f0d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 13(A). |
| [13](#co_fnRef_I7d42c5f1d6ee11ea8f41e1f6f2aa78) | *See* [Haw. Rev. Stat. § 431:20-114](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-114&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer must establish and maintain a reinsurance reserve, calculated by the amount of surplus fund on 7-1-88 and 20 cents for each $1,000 of net retained liability under each title insurance policy on a single risk after 7-1-88); [N.Y. Ins. Law § 6405](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6405&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (reinsurance reserve consists of “(i) one dollar fifty cents for each risk assumed under a binder or policy of insurance or any certificate or agreement issued under either of them, plus one-eightieth of 1% of the face amount of insurance effected thereby; and (ii) 3% of the gross fees and premiums received by it for guaranteed certificates of title, guaranteed searches and guaranteed abstracts of title”); [S.C. Code Ann. § 38-75-920](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-920&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (reinsurance reserve is the amount of the reserve in 1988 plus $1.50 per policy after 1988 plus 12.5 cents for each $1,000 of net retained liability; release 10% of the amount added to the reserve during the year for each of five years following the year the sum was added); [Wyo. Stat. § 26-23-309](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-309&originatingDoc=If4f512516fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (reinsurance reserve is the amount of the reserve on 5-27-83 plus 20 cents for every $1,000 of net retained liability under each policy written after 5-27-83). |
| [14](#co_fnRef_I7d42c5f2d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 13(B). |
| [15](#co_fnRef_I7d42c5f3d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 13(C):  A foreign or alien title insurance company licensed to transact title insurance business in this state shall maintain at least the same reserves on title insurance policies issued on properties located in this state as are required of domestic title insurance companies, unless the laws of the jurisdiction of domicile of the foreign or alien title insurance company require a higher amount. |
| [16](#co_fnRef_I7d42c5f4d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act, § 13. |

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2 Title Ins. Law § 18:31 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:31. Financial regulation—Reserves—Loss reserves

Yet another type of reserve fund required of title insurers in some states is a “loss” or “claim reserve.”[1](#co_footnote_I7d4e85c0d6ee11ea8f41e1f6f2a) Where such a reserve is required, the decision of how much to place in the loss reserve may be left to the insurer, with the insurer often being asked to determine an amount which is a “careful estimate” of the losses likely to result from all claims of which the insurer has notice and to add this estimated amount to the insurer’s loss reserve.[2](#co_footnote_I7d4eacd0d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d4e85c0d6ee11ea8f41e1f6f2aa78) | *See* [Ala. Code §§ 27-36-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-36-1&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [27-36-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-36-2&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. §§ 21.18.050](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.18.050&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.18.073](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.18.073&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1572(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1572&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-63-614](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-614&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12388](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12388&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-111&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-410](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-410&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, §§ 1103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1103&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [1109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1109&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. §§ 625.041](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.041&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [625.111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.111&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. §§ 33-10-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-10-5&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [33-10-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-10-10&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-116&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-611](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-611&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f10&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. §§ 304.6-040](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.6-040&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [304.6-080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.6-080&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [La. Stat. Ann. 22:895](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a895&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. §§ 5-103, 5-206; [Mich. Comp. Laws § 500.7306](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7306&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (claims reserve required in an amount estimated as being sufficient to provide for payment of all claims expense likely to be incurred by reason of every claim presented pursuant to written notice from or on behalf of an insured and recalculated at least once a year); [Minn. Stat. § 68A.01](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS68A.01&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-7&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. §§ 33-2-511](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-511&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [33-2-517](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-517&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1988](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1988&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. §§ 692A.150](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.150&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.170](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.170&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a11&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. §§ 17:46B-18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-18&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:18-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a18-14&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-10&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6405](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6405&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.12&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-18; [S.C. Code Ann. § 38-75-940](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-940&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-26-11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-26-11&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.261](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.261&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-17-408](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-17-408&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4609](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4609&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-311](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-311&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d4eacd0d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. Ann. § 20-1572](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1572&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12388](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12388&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-111&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-410](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-410&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-116](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-116&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f10&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.101&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Neb. Rev. Stat. § 44-1988](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1988&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. §§ 692A.150](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.150&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [692A.170](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.170&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a11&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. §§ 17:46B-18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-18&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:18-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a18-14&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-10&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6405](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6405&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (loss reserve shall be “at least equal” to the aggregate estimates of losses); [Ohio Rev. Code Ann. § 3953.12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.12&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-18; [S.C. Code Ann. § 38-75-940](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-940&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. code Ann. § 2551.261](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.261&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (this reserve to be calculated by making a careful estimate in each case of the loss and loss expense likely to be incurred, by reason of every claim presented, pursuant to notice from an insured of a title defect in or lien or adverse claim against the title insured and deducting said total expenses of the insurer from net profits); [Wyo. Stat. § 26-23-311](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-311&originatingDoc=If4f539316fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:32 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:32. Financial regulation—Investments

Many states have laws restricting the types of investments that insurers may make with their capital, surplus, and reserve funds. In most of these states, the same investment restrictions apply to title insurers.[1](#co_footnote_I7d5a6ca0d6ee11ea8f41e1f6f2a) In addition to the investments permitted to general insurers, title insurers usually are expressly permitted to invest in their title plants so long as the company also complies with certain minimum capital investment requirements.[2](#co_footnote_I7d5a93b0d6ee11ea8f41e1f6f2a) Some states also permit title insurers to make investments in real estate the title insurer acquired in the settlement of an insured’s claim.[3](#co_footnote_I7d5a93b1d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d5a6ca0d6ee11ea8f41e1f6f2aa78) | *See* Roberts, Public Regulation of Title Insurance Companies and Abstracters, 202–220 (1961). |
| [2](#co_fnRef_I7d5a93b0d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.240](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.240&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-63-832](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-832&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest an amount not exceeding 50% of its paid-in capital stock in its abstract plant and equipment and, with agency’s consent, in stocks of abstract companies); [Cal. Ins. Code § 12372](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12372&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-114](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-114&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 625.330](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.330&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in its abstract plant, in loans secured by mortgages on abstract plants, and with the consent of the agency, in stocks of abstract companies, in an amount not exceeding $300,000 or 50% of its surplus which exceeds minimum surplus required); [Ga. Code Ann. § 33-11-27](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-11-27&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in abstract plant and equipment, and with the agency’s consent, in stocks of abstract companies, an amount not to exceed 50% of its paid-in capital stock); [Haw. Rev. Stat. § 431:20-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-110&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (domestic title insurer may invest in purchases of materials and plant necessary to engage in the title insurance business as long as it has the required capital paid-in and the required guarantee fund deposit); [Idaho Code § 41-726](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-726&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in abstract plant and equipment not to exceed 50% of its paid-in capital stock and paid-in surplus); [Ky. Rev. Stat. Ann. § 304.7-250](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.7-250&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in abstract plant and equipment not to exceed 50% of paid-in capital stock and surplus; title insurer may invest, not in excess of 20% of assets, in loans to abstract companies); [Me. Rev. Stat. Ann. tit. 24-A, § 1129](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS1129&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in abstract plant and equipment not to exceed 50% of paid-in capital stock and surplus); [Mich. Comp. Laws § 500.901](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.901&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. § 381.068](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.068&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (domestic title insurer may invest in title plants in an amount up to 50% of the surplus to policyholders) (held unconstitutional by [Home Builders Ass’n of Greater St. Louis v. State, 75 S.W.3d 267, 268 (Mo. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002330383&pubNum=0004644&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4644_268&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4644_268)); [Mont. Code Ann. § 33-12-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-12-102&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 682A.220](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST682A.220&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in its abstract plant and equipment funds in an amount not exceeding 50% of its subscribed capital stock); [N.H. Rev. Stat. Ann. § 416-A:14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a14&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in title plant); [N.J. Rev. Stat. § 17:46B-22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-22&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (amount of investments shall not exceed 50% of sum of capital and surplus; may invest in title plants if comply with the minimum capital investment requirements); N.M. Stat. Ann. § 58A-9-20 (stock insurer may invest not more than 50% of its subscribed capital stock in materials or plant necessary to engage in title insurance business; mutual insurer may invest not more than 50% of its paid-in basic capital surplus in materials or plant necessary to engage in title insurance business); [N.C. Gen. Stat. § 58-7-182](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-7-182&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in its abstract plant and equipment, loans secured by mortgages on abstract plants and equipment, and with agency’s consent, in stocks of abstract companies, in an amount not exceeding the greater of $300,000 or 50% of its surplus that exceeds its required minimum surplus); [Ohio Rev. Code Ann. § 3953.14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.14&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurance company may invest not more than 10% of its admitted assets in title plant without prior approval of the agency head); [Okla. Stat. tit. 36, § 5002](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT36S5002&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in material or plants necessary to engage in the title insurance business, in an amount not exceeding 50% of the sum of its capital and surplus); [Or. Rev. Stat. § 733.690](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS733.690&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-32 (title insurer may invest in title plant, provided the insurer maintains investments in securities other than real estate and title plant in an amount of at least $250,000); [Tex. Ins. Code Ann. § 2551.151](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.151&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest not more than 50% of its capital stock in abstract plants); [Va. Code Ann. § 38.2-4604](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4604&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (incorporates restrictions of NAIC accounting practices and procedures manuals); [Wash. Rev. Code § 48.29.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.130&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in title plant and equipment not to exceed 50% of insurer’s capital and surplus); [Wyo. Stat. § 26-23-313](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-313&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may invest in title plants and equipment and stock of abstract companies not to exceed $300,000 or the insurer’s surplus, whichever is larger).  The Model Title Insurance Act also includes a provision permitting title insurers to invest assets in improving their title plants. Section 17B of the Model Act approves the insurer’s title plant as a permitted investment for title insurers so long as such investment does not exceed 50% of the surplus as regards policy holders shown on the title insurer’s annual statement. |
| [3](#co_fnRef_I7d5a93b1d6ee11ea8f41e1f6f2aa78) | *See* [Mich. Comp. Laws. § 500.7315](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7315&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.14(C)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.14&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-32(20)(ii); [Tex. Ins. Code Ann. § 2551.151(a)(3)(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.151&originatingDoc=If4f539346fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:33 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:33. Financial regulation—Dividends

Many state statutes specifically govern when a title insurance company may pay dividends.[1](#co_footnote_I7d60ae30d6ee11ea8f41e1f6f2a) For example, in New York no title insurance corporation may pay a dividend except out of its earned surplus and no dividend may exceed 10% of the title insurance corporation’s then outstanding capital shares unless the corporation has a surplus as to policyholders of at least 50% of its reinsurance reserve.[2](#co_footnote_I7d60ae31d6ee11ea8f41e1f6f2a) In California, title insurers are prohibited from paying dividends except from profits that remain after the corporation has retained unimpaired assets sufficient to meet capital, surplus, unearned premium reserve, and loss reserve requirements, plus a sum sufficient to pay all liabilities.[3](#co_footnote_I7d60d540d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d60ae30d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.060](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.060&originatingDoc=I4ac4d0e2990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12373](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12373&originatingDoc=I4ac4d0e2990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-110.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-110.5&originatingDoc=I4ac4d0e2990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (dividends may only be paid from profits remaining after retaining unimpaired assets in value equal to par value of shares of capital stock, issued and outstanding, amount set apart as reinsurance reserve, and a sum sufficient to pay all liabilities for expenses and taxes, all losses, and all other indebtedness); [N.Y. Ins. Law § 6407](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6407&originatingDoc=I4ac4d0e2990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d60ae31d6ee11ea8f41e1f6f2aa78) | [N.Y. Ins. Law § 6407](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6407&originatingDoc=I4ac4d0e2990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (no title insurance corporation may pay any dividend except out of its earned surplus; no title insurance corporation may pay any dividend which exceeds 10% of its then outstanding capital shares unless it has a surplus to policyholders of at least 50% of its reinsurance reserve (also called unearned premium reserve in some states)). |
| [3](#co_fnRef_I7d60d540d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12373](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12373&originatingDoc=I4ac4d0e2990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer shall not make dividends except from profits remaining after retaining unimpaired assets aggregating in value an amount equal to the sum of par value of shares of capital stock issued and outstanding, surplus fund, unearned premium reserve, loss reserve, and a sum sufficient to pay all liabilities). |

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2 Title Ins. Law § 18:34 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:34. Limits on size of single risks assumed

Most states statutorily limit the liability that a title insurance underwriter may assume on any single title insurance risk.[1](#co_footnote_I7d6edf00d6ee11ea8f41e1f6f2a) The director of the state regulatory agency sometimes may be permitted to waive this restriction if a title insurer shows “good cause” for doing so as to a specific risk.

Usually single risk limits are based on percentages of the title company’s capital and surplus funds, minus the value of the company’s title plant.[2](#co_footnote_I7d6edf01d6ee11ea8f41e1f6f2a) Numerous states’ statutes provide that the retained liability under a single title insurance risk may not exceed 50% of the net amount remaining after deducting the value of the underwriter’s title plants from the sum of its capital, surplus, unearned premium reserve, and voluntary reserve funds.[3](#co_footnote_I7d6f0610d6ee11ea8f41e1f6f2a) Pennsylvania’s statute is worded to prohibit a title insurer from insuring any single risk in an amount greater than the title insurer’s assets (excluding agency and escrow funds) minus its required capital, surplus, and unearned premium reserve funds and the value of its title plant.[4](#co_footnote_I7d6f0611d6ee11ea8f41e1f6f2a) In Texas, a title insurer cannot, in a single policy, assume a liability of more than 50% of the title insurer’s capital stock and surplus.[5](#co_footnote_I7d6f0612d6ee11ea8f41e1f6f2a)

If a title insurance applicant applies for an amount of insurance that would put one title insurance underwriter over its single risk limit, the insurer will need to find a reinsurer or coinsurer to take on the excess.[6](#co_footnote_I7d6f0613d6ee11ea8f41e1f6f2a) See §§ [18:37](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a37&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [18:40](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a40&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing reinsurance and coinsurance. A title insurer may not circumvent single risk limitations by issuing two or more policies insuring the same property interest.[7](#co_footnote_I7d6f0616d6ee11ea8f41e1f6f2a) If reinsurance is used, the reinsurance should be issued simultaneously with the primary policy that is subject to the statutory limit.[8](#co_footnote_I7d6f0617d6ee11ea8f41e1f6f2a)

An issue which may arise is whether a particular risk a title insurer has assumed actually does exceed state or an insurance applicant’s single risk limitation. “Single insurance risk” is defined in some states’ statutes as:

the insured amount of any policy or contract of title insurance issued by a title insurer unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event it means the sum of the insured amounts of all such policies or contracts. Any policy or contract which insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of the fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk.[9](#co_footnote_I7d6f2d20d6ee11ea8f41e1f6f2a)

Determining whether a title insurer has exceeded a single risk limitation is not always clear from [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on its face. A purchase of multiple properties insured by separate policies could be held to be a single risk over the state’s maximum when the transaction uses a single loan or credit arrangement, cross-collateralized properties, a [**leveraged buyout**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e937ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), an interest rate-swap agreement, or a tie-in endorsement.[10](#co_footnote_I7d6f2d21d6ee11ea8f41e1f6f2a) Also, when more than one policy is issued for a transaction involving a single site, both policies may need to be looked at to determine the insurer’s aggregate liability as to the site, even if each policy itself is not over the maximum single risk.[11](#co_footnote_I7d6f2d22d6ee11ea8f41e1f6f2a) For example, if one insurer issues one policy insuring the fee simple owner of a $20 million parcel and another policy insuring the leasehold mortgagee in the amount of $20 million, the insurer has an aggregate liability of $40 million, since there is not a noncumulative provision between owner’s and leasehold mortgagee policies like there is between owner’s and mortgagee policies which insure the owner and mortgagee’s separate interests in the same land.[12](#co_footnote_I7d6f2d23d6ee11ea8f41e1f6f2a) Also, a title insurer who issues one policy insuring a $20 million first lien mortgagee and then four years later issues a $20 million second lien mortgagee policy has an aggregate liability of $40 million.[13](#co_footnote_I7d6f2d24d6ee11ea8f41e1f6f2a) Additionally, endorsements for shared appreciation mortgages, variable rate mortgages with [**negative amortization**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0b91ef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), and [**interest rate swaps**](http://practicallawconnect.thomsonreuters.com/Document/I2104e148ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) increase the title insurer’s liability above the amount stated in the policy’s Schedule A and should be considered when determining whether the insured amount is greater than the insurer’s single risk limitation.[14](#co_footnote_I7d6f2d25d6ee11ea8f41e1f6f2a)

No case has been found in which an insured has attempted to assert rights under a state’s single risk limitation statute to prohibit a title insurer from issuing a policy which assumes liability in excess of the statutory limits.

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| **Footnotes** | |
| [1](#co_fnRef_I7d6edf00d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.220](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.220&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability under a single title insurance risk may not exceed 50% of the net amount remaining after deducting the value of its title plants from the sum of its capital, surplus, unearned premium reserve and voluntary reserves—same requirement applies to any secondary risk assumed through reinsurance or coinsurance); [Ariz. Rev. Stat. Ann. § 20-1573](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1573&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability under a single title insurance risk may not exceed 50% of the net amount remaining after deducting the value of its title plants from the sum of its capital, surplus, unearned premium reserve, and voluntary reserves); [Colo. Rev. Stat. § 10-11-112](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-112&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability under a single title insurance risk may not exceed 50% of the net amount remaining after deducting the value of its title plants from the sum of its capital, surplus, unearned premium reserve, and voluntary reserves); [Conn. Gen. Stat. § 38a-406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-406&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability for a single risk may not exceed 50% of sum of its total surplus to policyholders and reserve, less the value assigned to title plants—same requirement applies to reinsurance); [Fla. Stat. Ann. § 627.778](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.778&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (limit of risk: the amount must not exceed one-half of the insurer’s surplus and the contract must show the dollar amount of the risk assured); [Haw. Rev. Stat. § 431:20-112](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-112&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (limit of risk not to exceed 50% of total capital, surplus, and reserves other than loss or claim reserves); [215 Ill. Comp. Stat. § 155/8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f8&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability may not exceed 50% of the total surplus to policyholders; applies to reinsurance); [Ind. Code § 27-7-3-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-20&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (limitation on risk not to exceed 50% of the aggregate amount of title insurance company’s total capital and surplus and its reserve other than loss reserves); [Kan. Stat. Ann. § 40-1107a](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-1107A&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (limitation on risk not to exceed 50% of paid-up capital and surplus); [Miss. Code Ann. § 83-15-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-5&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (limit of risk not to exceed 50% of capital and surplus, unless reinsured); [Neb. Rev. Stat. § 44-1986](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1986&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability not to exceed 50% of the sum of insurer’s surplus plus statutory premium reserve, minus the value of title plants; same applies to reinsurance); [Nev. Rev. Stat. § 692A.180](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.180&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability may not exceed 50% of the sum of insurer’s capital, surplus, unearned premium reserve, and voluntary reserves, minus value of its title plants); [N.H. Rev. Stat. Ann. § 416-A:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a12&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability under a single title insurance risk may not exceed 50% of the net amount remaining after deducting the value of its title plants from the sum of its capital, surplus, unearned premium reserve and voluntary reserves); [N.J. Rev. Stat. § 17:46B-19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-19&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability may not exceed capital, surplus, premium reserve, and voluntary reserve, minus value of title plants; applies to reinsurance and coinsurance); [N.M. Stat. Ann. § 59A-7-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-7-10&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability may not exceed 50% of insurer’s surplus as to policyholders); [N.Y. Ins. Law § 6403](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6403&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability may not exceed the sum of capital, surplus, statutory premium, and voluntary reserves); [N.C. Gen. Stat. § 58-26-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-15&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability may not exceed 40% of its combined capital and surplus, unless have the approval of the regulatory agency head); [N.D. Cent. Code § 26.1-20-04](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-20-04&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unless the excess in reinsured, stock title insurance company may not expose itself to loss on any one risk exceeding 50% of its paid-up capital and surplus; mutual title insurance company may not expose itself to loss on any one risk exceeding 50% of its surplus); [Or. Rev. Stat. § 731.504](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS731.504&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (risk not to exceed an amount more than 50% of surplus); 40 Pa. Cons. Stat. § 910-19 (risk not to exceed assets minus the sum of minimum required capital, unearned premium reserve, and value of title plant); [S.C. Code Ann. § 38-75-910](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-910&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (risk not to exceed 50% of aggregate amount of insurer’s total capital, surplus, and reserves other than loss or claim reserves); [Tex. Ins. Code Ann. § 2551.301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.301&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (risk not to exceed 50% of capital and surplus); [Utah Code Ann. § 31A-20-109](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-20-109&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (risk may not exceed 50% of capital and surplus); [Va. Code Ann. § 38.2-4607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4607&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (risk not to exceed 50% of capital, surplus, and reserves other than loss or claim reserves); [Wyo. Stat. § 26-23-307](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-307&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (net retained liability may not exceed 50% of the sum of surplus and reinsurance reserve, minus the value of title plants). |
| [2](#co_fnRef_I7d6edf01d6ee11ea8f41e1f6f2aa78) | The Model Title Insurance Act would limit the risk assumed on any single policy to 50% of the title insurer’s surplus fund and reinsurance reserve (also called unearned premium reserve in some states), minus the fair market value of the insurer’s title plant.  The net retained liability of a title insurer for a single risk on property located in this state, whether assumed directly or as reinsurance, may not exceed 50% of the sum of its total surplus to policyholders and reinsurance reserve, less the value assigned to title plants, as shown in the most recent annual statement of the insurer on file in the office of the commissioner.  NAIC Model Title Insurance Act § 11(A). |
| [3](#co_fnRef_I7d6f0610d6ee11ea8f41e1f6f2aa78) | *See* Note 1 and statutes cited therein. |
| [4](#co_fnRef_I7d6f0611d6ee11ea8f41e1f6f2aa78) | 40 Pa. Cons. Stat. § 910-19(a). |
| [5](#co_fnRef_I7d6f0612d6ee11ea8f41e1f6f2aa78) | [Tex. Ins. Code Ann. § 2551.301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.301&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7d6f0613d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Tex. Ins. Code Ann. § 2551.301(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.301&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): A title insurance company may exceed the limit described by subsection (a) if the excess liability is reinsured in due course in an authorized title insurance company. |
| [7](#co_fnRef_I7d6f0616d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Fla. Stat. Ann. § 627.778(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.778&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I7d6f0617d6ee11ea8f41e1f6f2aa78) | The Texas statute permits the reinsurance of the excess amount to be acquired “in due course.” [Tex. Ins. Code Ann. § 2551.301](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.301&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I7d6f2d20d6ee11ea8f41e1f6f2aa78) | [Nev. Rev. Stat. § 692A.050](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.050&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [215 Ill. Comp. Stat. § 155/3(10)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f3&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-1(j)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-1&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. § 60A.09](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS60A.09&originatingDoc=If4f5393a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7d6f2d21d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). |
| [11](#co_fnRef_I7d6f2d22d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). |
| [12](#co_fnRef_I7d6f2d23d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). |
| [13](#co_fnRef_I7d6f2d24d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). |
| [14](#co_fnRef_I7d6f2d25d6ee11ea8f41e1f6f2aa78) | “For example, a loan policy in the amount of $20 million which has a shared appreciation endorsement with an additional amount of insurance of $1.5 million has a total single risk of $21.5 million.” Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). |

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2 Title Ins. Law § 18:35 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:35. Financial statements made to the regulatory agency

Many states require title insurers to file annual and/or quarterly financial statements with the regulatory agency.[1](#co_footnote_I7d7bfe60d6ee11ea8f41e1f6f2a) Usually, these statements must include a description of the insurer’s assets and liabilities, the amount of title insurance premiums received during the previous year, the amounts held out for unearned premium reserves, and the amount of unpaid losses and current claims upon title insurance policies by insureds.[2](#co_footnote_I7d7bfe61d6ee11ea8f41e1f6f2a) These give the regulatory agency the specific data needed to determine single risk limitations, rates to be charged, taxes to be assessed against the insurer, and whether the insurer is complying with reserve fund requirements.

The most widely-used standardized forms for reporting to state regulators data regarding a title insurer’s overall financial condition are the National Association of Insurance Commissioners’ Annual Statement (Form 9) and the American Land Title Association’s Uniform Financial Reporting Plan.[3](#co_footnote_I7d7c2570d6ee11ea8f41e1f6f2a)

Fees may be required with the filing of financial statements.[4](#co_footnote_I7d7c2571d6ee11ea8f41e1f6f2a) Several states require title insurance companies to pay a tax on the gross premiums they reportedly received.[5](#co_footnote_I7d7c2572d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d7bfe60d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. §§ 21.66.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.080&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [21.66.085](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.085&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 25 Ark. Ins. Dep’t Rule & Regulation § 4 (requires annual statements to be filed by domestic title insurance companies); [Cal. Ins. Code § 12401.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.5&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [3 Colo. Code Regs. 702-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1016634&cite=3COADC702-3&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))§ 4 (requires title insurer to file annual financial report with the regulatory agency); Conn. Bull. FS-6a-92 (title insurance companies must file quarterly financial statements with the agency); Delaware Circular Letters 81-1, 81-9 (requires annual financial statement to be filed); [Haw. Rev. Stat. § 431:20-122](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-122&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f13&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code § 27-7-3-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-14&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [24-A Me. Rev. Stat. Ann. § 423](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS423&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mass. Gen. Laws ch. 175, § 25](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST175S25&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Minn. Stat. Ann. § 60A.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS60A.13&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-1&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-2-705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-705&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 400-A:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS400-A%3a31&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-55](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-55&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-27-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-27-15&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.11&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 72 Pa. Cons. Stat. § 712; [Tenn. Code Ann. § 56-35-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-108&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.152](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.152&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-406](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-406&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d7bfe61d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.080&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (statement must show assets, liabilities, title premiums received, unpaid losses, and claims); [Cal. Ins. Code § 12401.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12401.5&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. § 155/13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f13&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (statement must show the financial condition of the company, disclosing assets, liabilities, earnings, and expenses); [Ind. Code § 27-7-3-14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-14&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (annual financial statement must include a showing that 10% of all actual premiums received by the company has been duly set apart and held in reserve fund); [Mont. Code Ann. § 33-2-705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-705&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (tax report required to be filed); [N.H. Rev. Stat. Ann. § 400-A:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS400-A%3a31&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (tax report required to be filed); [N.C. Gen. Stat. § 58-27-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-27-15&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (statement must exhibit assets and liabilities, income, disbursements, deposits); [Ohio Rev. Code Ann. § 3953.11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.11&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (statement must show the amount of premiums received during the previous year on title insurance policies); 72 Pa. Cons. Stat. Ann. § 712 (report must show the number of shares of capital stock subscribed for or issued by the title insurance company and the actual value thereof); [Tenn. Code Ann. §§ 56-35-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-107&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [56-35-114](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-114&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (annual statement must show that 10% of premiums has been set aside in a risk reserve). |
| [3](#co_fnRef_I7d7c2570d6ee11ea8f41e1f6f2aa78) | Nelson Lipshutz, So You’re Thinking About Rate Regulation, 72 Title News 14 (May/June 1993). |
| [4](#co_fnRef_I7d7c2571d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Alaska Stat. § 21.66.080](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.080&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (filing fee required to be paid with filing of annual financial statements); [215 Ill. Comp. Stat. § 155/14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f14&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (filing fee for annual financial statement is $50); [Ind. Code § 27-7-3-15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-15&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (annual statement filing fee is $20); [24-A Me. Rev. Stat. Ann. § 237](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS237&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (annual statement filing fee must be paid by the prescribed date or the insurer’s license could be suspended or revoked); [Minn. Stat. Ann. § 60A.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000044&cite=MNSTS60A.13&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (fee for filing of annual statement may not exceed the fee established by the NAIC by more than 50%). |
| [5](#co_fnRef_I7d7c2572d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.110&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurance companies to pay an annual tax of 1% on gross title insurance premiums received); [Colo. Rev. Stat. § 10-3-209](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-3-209&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires all insurance companies to pay premium taxes and sets a premium tax rate of 2% after the year 2000); [Fla. Stat. Ann. § 624.509](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS624.509&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires title insurers to pay an annual tax on title insurance risk premiums); [Idaho Code § 41-402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-402&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires premium of 1.5% on gross premiums); [Me. Rev. Stat. Ann. tit. 36, § 2513](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT36S2513&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (premium tax of 2% per year); [Mo. Rev. Stat. §§ 148.320](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST148.320&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [148.370](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST148.370&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [148.390](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST148.390&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (2% tax on direct premiums); [Mont. Code Ann. § 33-2-705](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-705&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (tax of 2 3/4% on net premiums); [Neb. Rev. Stat. § 77-908](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS77-908&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (1% tax on gross premiums); [Nev. Rev. Stat. § 680B.025](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST680B.025&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires payment of a premium tax); [N.H. Rev. Stat. Ann. §§ 400-A:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS400-A%3a31&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [400-A:32](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS400-A%3a32&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires payment of premium tax); [N.M. Stat. Ann. §§ 59A-30-12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-12&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [59A-30-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-13&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (requires premium fee which is used to run regulatory agency); [Tenn. Code Ann. § 56-35-107](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-107&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (tax of 2.5% on all risk rate charges); [Tex. Ins. Code Ann. § 223.003](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS223.003&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (annual tax of 1.35% of taxable premiums); [Utah Code Ann. § 59-9-101(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS59-9-101&originatingDoc=If4f5393d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (tax of 0.45% of premiums received during previous year). |

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2 Title Ins. Law § 18:36 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:36. Calculation of assets or liabilities in determining financial condition of insurer

Unearned premium reserves usually are to be considered a liability or reserve liability of the title insurer in determining its financial condition.[1](#co_footnote_I7d874900d6ee11ea8f41e1f6f2a) Amounts set aside in loss or claim reserves in any year usually are deducted in determining the net profits of a title insurer for that year.[2](#co_footnote_I7d877010d6ee11ea8f41e1f6f2a) Title plants and equipment necessary for conducting title insurance business usually are allowed as assets in determining a title insurer’s financial condition.[3](#co_footnote_I7d877011d6ee11ea8f41e1f6f2a) Premiums and fees payable for title insurance generally also are allowed as assets.[4](#co_footnote_I7d8a5640d6ee11ea8f41e1f6f2a) In many states, the determination of what may be recognized as assets is based in whole or in part on the National Association of Insurance Commissioners’ “Accounting Practices and Procedures Manual.”[5](#co_footnote_I7d8a5641d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d874900d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Ariz. Rev. Stat. Ann. § 20-1568](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1568&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Cal. Ins. Code Ann. § 12381; [Conn. Gen. Stat. § 38a-408](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-408&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 625.111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.111&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. Ann. § 431:20-114](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-114&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-611](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-611&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws § 500.7305](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7305&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Miss. Code Ann. § 83-15-9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000933&cite=MSSTS83-15-9&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Rev. Stat. Ann. § 381.072(2)(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.072&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.160](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.160&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-8-11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-8-11&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6405](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6405&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-26-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-26-20&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Rev. Stat. § 733.090](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS733.090&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-14; [S.C. Code Ann. § 38-75-920](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-920&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.251](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.251&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4610.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4610.1&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-309](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-309&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d877010d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Alaska Stat. § 21.18.050](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.18.050&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12388](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12388&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-11-111](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-111&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 1103](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1103&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 625.041](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.041&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code §§ 41-605](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-605&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [41-611](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-611&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. § 692A.150](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST692A.150&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a11&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-18&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-30-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-30-10&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.12&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-18; [Tex. Ins. Code Ann. § 2551.261](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.261&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7d877011d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Ala. Code § 27-37-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-37-2&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.66.240](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.240&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-503](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-503&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12372](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12372&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-412](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-412&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 1102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S1102&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 625.031](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS625.031&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ga. Code Ann. § 33-10-2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST33-10-2&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-110](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-110&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-603](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-603&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. 155/7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f7&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ky. Rev. Stat. Ann. § 304.6-020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000010&cite=KYSTS304.6-020&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Md. Ins. Code Ann. § 5-101; [Mich. Comp. Laws Ann. § 500.901](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.901&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-2-502](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-2-502&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Nev. Rev. Stat. §§ 681B.010(12)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST681B.010&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [681B.020](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST681B.020&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.14&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-32(21); [S.D. Codified Laws Ann. § 58-26-10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-26-10&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7d8a5640d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [N.M. Stat. Ann. § 59A-8-1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-8-1&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6404](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6404&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7d8a5641d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Ark. Code Ann. § 23-63-603](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-63-603&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Me. Rev. Stat. Ann. tit. 24-A, § 901-A](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000265&cite=MESTT24-AS901-A&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-17-201](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-17-201&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-1306.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-1306.3&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. §§ 26-6-101](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-6-101&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [26-6-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-6-102&originatingDoc=If4f539406fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:37 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:37. Regulation of coinsurance and reinsurance

One consequence of state insurance codes’ single risk limitations, discussed in [§ 18:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a34&originatingDoc=If4f539436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), is that when a large policy is to be issued, the title insurer originating the policy may call for reinsurance or coinsurance. Even if no statutory risk limitation exists, either the title insurer or the title insurance applicant’s own prudent business practices may prompt them to ask for reinsurance or coinsurance in especially large transactions. Whether the amount of an insurance policy is too large for a particular insurer to assume depends primarily on the insurer’s net worth. A typical statute may state that no single risk taken by an insurer can exceed a stated percentage of the value of the insurer’s capital, surplus, and reserves, minus the value of its title plant.[1](#co_footnote_I7d8ffb91d6ee11ea8f41e1f6f2a)

Reinsurance is a contract between two or more title insurers whereby the reinsurer agrees to indemnify against liability assumed by an insurer who originated a policy.[2](#co_footnote_I7d8ffb93d6ee11ea8f41e1f6f2a) The original or “primary” insurer remains liable to pay all losses up to the amount of a stated “primary retained risk.” The reinsurers pay any loss exceeding the amount of the primary retained risk.[3](#co_footnote_I7d8ffb94d6ee11ea8f41e1f6f2a) [Section 18:38](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a38&originatingDoc=If4f539436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) examines the practice of reinsurance. Coinsurance differs from reinsurance; [§ 18:39](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a39&originatingDoc=If4f539436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discusses the practice of coinsurance. With coinsurance, each of two or more title insurers assume a proportionate share of the risk from the first dollar of loss exposure.[4](#co_footnote_I7d91d052d6ee11ea8f41e1f6f2a) Each policy refers to the fact that the risk is coinsured and specifies the proportion of loss to be borne by each coinsurer.[5](#co_footnote_I7d91d053d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7d8ffb91d6ee11ea8f41e1f6f2aa78) | *See* [Colo. Rev. Stat. Ann. § 10-11-112](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-112&originatingDoc=If4f539436fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and other state statutes cited in [§ 18:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a34&originatingDoc=If4f539436fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7d8ffb93d6ee11ea8f41e1f6f2aa78) | *See, generally,* [Carolina Nat. Ins. Co. v. South Carolina Tax Commission, 256 S.C. 466, 182 S.E.2d 878, 879 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971128373&pubNum=0000711&originatingDoc=If4f539436fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_711_879&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_879) (reinsurance is a contract between two or more insurance companies whereby a certain portion of the liability on a policy above a primary amount retained by the original title insurer is assumed by a reinsuring company or companies). |
| [3](#co_fnRef_I7d8ffb94d6ee11ea8f41e1f6f2aa78) | *See* [Appendix I](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPI&originatingDoc=If4f539436fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), ALTA, Facultative Reinsurance Agreement, 1-3 (April 6, 1990). |
| [4](#co_fnRef_I7d91d052d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing the 1987 and 1970 ALTA Policies, 417, 465 (Practicing Law Institute Real Estate Law & Practice Course Handbook Series No. 306, 1988). |
| [5](#co_fnRef_I7d91d053d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing the 1987 and 1970 ALTA Policies, 417, 465. |

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2 Title Ins. Law § 18:38 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:38. Regulation of coinsurance and reinsurance—Reinsurance

Title insurers favor reinsurance because it allows them to minimize their primary liability.[1](#co_footnote_I7da446e0d6ee11ea8f41e1f6f2a) With reinsurance, liability of multiple insurers is layered. The company that issues the [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is called the “ceder.” The ceder retains a specific amount of risk for which it will have “primary liability” or be exclusively responsible. Any amounts necessary to indemnify for the insured’s loss, including defense costs and attorney’s fees, will first come out of the primary liability or retention. The amount of the total liability that the ceder will retain depends upon state statutes which impose single risk limits, See [§ 18:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a34&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), upon the insurer’s self-imposed risk retention limits, and upon limits imposed by the title insurance applicant.

Risk retention limits imposed by title insurance applicants most often involve large institutional lenders who evaluate a title insurer’s liquidity and place a limit on the amount of primary liability the insurer may retain on the basis of the title insurer’s “NAIC Form 9.”[2](#co_footnote_I7da446e2d6ee11ea8f41e1f6f2a) This form, developed by the National Association of Insurance Commissioners, gives an annual statement of a title insurance company’s assets and liabilities. Title insurers file a “Form 9” in each state where they are licensed to do business.[3](#co_footnote_I7da46df0d6ee11ea8f41e1f6f2a)

The ceder contracts with one or more other title insurers, “reinsurers,” who sell insurance to the ceder and take a portion of the total risk of loss. “Secondary liability” or “secondary retention” is the amount for which a reinsurer at the second level will bear liability in the event of an insured loss. The ceder may cede all the secondary liability to reinsurers or retain a portion and cede the balance to other title insurers. In large commercial transactions, there also may be a tertiary level of reinsurance which is one step more remote from the risk than secondary reinsurance and which bears the cost of a loss that exceeds the primary and secondary liabilities. All secondary reinsurers’ liability must be exhausted before a claim will touch the tertiary level.[4](#co_footnote_I7da46df1d6ee11ea8f41e1f6f2a) In a very few exceptionally large transactions, a quaternary reinsurance agreement exists which follows these same principles.[5](#co_footnote_I7da46df2d6ee11ea8f41e1f6f2a) A tertiary agreement generally is used for transactions with a single risk in excess of approximately $275 million and a quaternary agreement may be used when the risk exceeds $600 million.[6](#co_footnote_I7da46df3d6ee11ea8f41e1f6f2a)

For example, if First Title has been asked to issue a policy insuring a fee simple title for $100 million, First Title is the ceder and would be primarily liable for a chosen sum, perhaps $15 million.[7](#co_footnote_I7da46df4d6ee11ea8f41e1f6f2a) First Title then would purchase reinsurance, perhaps $25 million, from Second Title, $25 million from Third Title, and $25 million from Fourth Title, and take as secondary liability an additional $10 million. If the insured then suffered a $100 million loss, First Title would be responsible to pay all the first $15 million. The remaining $85 million loss would be divided on a ratio, with each of the reinsurers being liable for the loss over $15 million based on the percentage of the secondary liability which each assumed. First Title would be liable for 10/85 of the amount of loss over the $15 million. Second Title, Third Title and Fourth Title would each be liable for 25/85 of the amount of the loss over $15 million. If the loss suffered was $20 million, First Title would be liable for the primary amount of $15 million and 10/85 of the remaining $5 million. Each of the three reinsurers would be equally liable for 25/85 of the remaining $5 million. If a tertiary agreement had been involved, and if the loss had been larger than the amount of all the primary and secondary liability, the preceding steps would be carried through a third level. With a quaternary agreement the process would continue through a fourth level.

The reinsurance contract between insurers may be accomplished with a document called a “facultative reinsurance agreement” or by a “treaty.” With a “facultative” reinsurance agreement, a reinsurer has the capacity to accept or reject each individual risk a primary insurer offers. Thus, it is contracted for on a policy-by-policy basis. The facultative reinsurance agreement is more often used for reinsurance transactions and usually will be used for large transactions.[8](#co_footnote_I7da46df5d6ee11ea8f41e1f6f2a) Conversely, insurers that are party to a reinsurance treaty agree to reinsure a portion of each other’s risks in any primary policies that satisfy particular specifications. Several established regional and national title insurance companies participate in reinsurance treaties and automatically reinsure the risks of other treaty participants.

A standard form of facultative reinsurance agreement is available from the [**American Land Title Association (ALTA)**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).[9](#co_footnote_I7da46df6d6ee11ea8f41e1f6f2a) In rare circumstances the parties may request a tailor-made reinsurance agreement to respond to the needs of a particular transaction.[10](#co_footnote_I7da46df7d6ee11ea8f41e1f6f2a)

A reinsurer may request an additional reinsurance fee if asked to assume liability in a transaction which involves an extra-hazardous risk, including any transaction where endorsements are being issued for revolving credit, a change in members of a partnership or a limited liability company, usury, zoning, nonimputation of knowledge, assignments of beneficial interests in a navigational servitude, compliance with doing business laws, or option coverage in a loan policy.[11](#co_footnote_I7da49500d6ee11ea8f41e1f6f2a)

The ALTA’s standard form Facultative Reinsurance Agreement is a contract between the ceder and the reinsurer. The insured is not a party to this agreement.[12](#co_footnote_I7da49501d6ee11ea8f41e1f6f2a) Nevertheless, the agreement does give certain rights to the insured. It permits the reinsurer to pay (a) the ceder in reimbursement for what the ceder has paid the insured, (b) the ceder in trust for the insured prior to the ceder’s payout, or (c) the insured directly. Additionally, it contains a “direct access provision” which lets an insured seek payment directly from the reinsurer in the event of a claim exceeding the ceder’s primary liability, if the insured also has pursued or is pursuing a claim against the ceding insurer or if the ceder is in receivership.[13](#co_footnote_I7da49502d6ee11ea8f41e1f6f2a) The reinsurer may assert any defense to liability which the ceder has against the insured but may not assert against the insured defenses or counterclaims which the reinsurer may have against the ceder.[14](#co_footnote_I7da49503d6ee11ea8f41e1f6f2a)

Complementing the direct access provision, the ALTA added a clause to its Facultative Reinsurance Agreement in 1990 requiring the insured to notify the reinsurer in a timely manner of any claim the insured has served on the ceder.[15](#co_footnote_I7da49504d6ee11ea8f41e1f6f2a) Nevertheless, the insured’s failure to so notify will not defeat the insured’s rights unless the reinsurer is actually prejudiced by the failure. See also [§§ 8:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a1&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) considering the similar notice provision in the ALTA title insurance policies. If the reinsurer has been prejudiced by the insured’s failure to provide timely notice, the insured will lose its rights against the insurer only to the extent of the prejudice suffered.

Under the ALTA’s standard Facultative Reinsurance Agreement, the ceding company retains the right to investigate, negotiate, litigate, and settle any claims that arise on the policy being issued.[16](#co_footnote_I7da49506d6ee11ea8f41e1f6f2a) However, the ceder cannot settle any claim that would require a payment by a reinsurer without prior approval from the reinsurer. Each reinsurer also has the right to investigate on its own but is not obligated to do so.

If any losses are recouped from third parties, the amount recouped, minus the expenses of collection, goes first to the reinsurer, then the ceder.[17](#co_footnote_I7da49507d6ee11ea8f41e1f6f2a) If the ceder is no longer operating, the reinsurer is subrogated to the ceder’s rights to recoup losses. The ALTA agreement expressly provides that the reinsurer is not responsible for punitive damages or other nonpolicy liability of the ceder, such as liability for escrow or closing errors.[18](#co_footnote_I7da49508d6ee11ea8f41e1f6f2a)

An amendment to the 1990 ALTA Facultative Reinsurance Agreement was proposed in the summer of 1994 to respond to the National Association of Insurance Commissioners’ (hereinafter NAIC) requirement that a title insurer not accredited by the NAIC should be subject to nationwide service of process. It covenants that a reinsurer that is not licensed or accredited in the state of the ceder’s [**domicile**](http://practicallawconnect.thomsonreuters.com/Document/I6117211f4da011e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) will take steps necessary to submit to the jurisdiction of an alternative dispute resolution panel or a court in any state.[19](#co_footnote_I7da4bc10d6ee11ea8f41e1f6f2a)

When tertiary reinsurance is purchased, two other ALTA facultative reinsurance agreement forms may be used. These permit a title insurer to accept reinsurance from a ceding company and in turn cede portions of the reinsurance which it has accepted to other insurers. One ALTA tertiary reinsurance agreement form allows a title insurer which has become a reinsurer at the secondary level to cede portions of the reinsurance to other title insurers.[20](#co_footnote_I7da4bc11d6ee11ea8f41e1f6f2a) A second form of tertiary reinsurance agreement allows the title company who has become a secondary reinsurer to take its own primary retention and then divide the reinsurance into secondary and tertiary levels.[21](#co_footnote_I7da4bc12d6ee11ea8f41e1f6f2a) Other than this distinction of splitting the reinsurance on more than one level, the two reinsurance agreements are the same. Under both forms, each level of reinsurance must be exhausted before a claim can touch the next level.

Another contract that can come into play in the reinsurance context is a “retrocession agreement.” Under a retrocession agreement a reinsurer cedes back to the ceder or an affiliate of the ceder insurance liability that the reinsurer had assumed under a reinsurance contract.[22](#co_footnote_I7da4bc13d6ee11ea8f41e1f6f2a) An example would be Company *A* ceding to Company *X* all liability over $1 million.[23](#co_footnote_I7da4bc14d6ee11ea8f41e1f6f2a) Company *A* has two affiliate companies, *B* and *C*, each of which can assume a $1 million liability, so Company *X* retrocedes to each *B* and *C* $1 million of the liability Company *X* had assumed under the reinsurance agreement with *A.*[24](#co_footnote_I7da690d0d6ee11ea8f41e1f6f2a) If not, perhaps Company *X* is a large title insurer with a self-imposed single risk limit of $5 million.[25](#co_footnote_I7da690d1d6ee11ea8f41e1f6f2a) A particular title insurance applicant restricts *X* to liabilities of $100,000 and requires that *X* reinsure all risks over $100,000 equally with companies *Y* and *Z.* Companies *Y* and *Z* then retrocede part or all of the liability they have assumed as reinsurers, up to $5 million, back to company *X.*[26](#co_footnote_I7da690d2d6ee11ea8f41e1f6f2a)

States regulate reinsurance not only by imposing limits on the maximum size of any single risk an insurer may accept but also by establishing the qualifications of those who may act as reinsurers and the conditions under which reinsurance may be issued. Most states expressly authorize title insurers to obtain reinsurance for all or part of their liability under a policy.[27](#co_footnote_I7da6b7e0d6ee11ea8f41e1f6f2a) These statutes also permit title insurers to reinsure title policies issued by others.[28](#co_footnote_I7da6b7e1d6ee11ea8f41e1f6f2a) Some states specify that title insurers may accept reinsurance within the same limits as they are authorized to transact directly.[29](#co_footnote_I7da6def0d6ee11ea8f41e1f6f2a) Even if the authority to reinsure is not expressly granted in a state statute, it likely is implied in the grant of power to transact the business of title insurance.

Another common regulation mandates that reinsurance only be obtained from solvent insurers.[30](#co_footnote_I7da6def1d6ee11ea8f41e1f6f2a) Some regulations do this by specifying that any insurer who is to act as reinsurer must have a surplus as to policyholders at least in the amount of the paid-in capital required of a title insurer licensed to do business in the state.[31](#co_footnote_I7da6def2d6ee11ea8f41e1f6f2a)

Besides the more typical uses of reinsurance discussed so far in this subsection, many states require an insurer to provide reinsurance for all outstanding risks as a condition precedent to that insurer’s terminating its business.[32](#co_footnote_I7da6def3d6ee11ea8f41e1f6f2a) If an insurer is involuntarily liquidated, its reserve funds will be used to buy reinsurance for outstanding insurance policies.[33](#co_footnote_I7da6def4d6ee11ea8f41e1f6f2a)

A legal issue which may arise in the context of reinsurance is whether the ceder disclosed all the risks before the reinsurer signed the reinsurance contract. The ceder has a duty to disclose all facts known to any title insurer being asked to reinsure so that the latter may make an informed decision to either decline or accept the reinsurance. The reinsurance agreement may impose this duty, as does the ALTA Facultative Reinsurance Agreement. If there is no express full disclosure covenant in the reinsurance agreement, such a duty still would likely be implied pursuant to the implied covenant of good faith and fair dealing. In some states, statutes require full disclosure to potential reinsurers.[34](#co_footnote_I7da70600d6ee11ea8f41e1f6f2a) The disclosure should include the amounts of liability retained and ceded, plus any information that could affect a reinsurer’s underwriting decision. The disclosure should include information about any reinsurers who have declined the request to reinsure and their reasons for declining. This information must be given even to insurers who already have agreed to reinsure so that they can reconsider their risk based on all the facts. In addition, any modification of a reinsurance plan must be consented to by all the reinsurers and also the insured.[35](#co_footnote_I7da70601d6ee11ea8f41e1f6f2a) If any employee of the ceder learns of problems when preparing the commitment for title insurance or the policy, the ceder will be deemed to have actual knowledge of them and will be liable if the facts are not disclosed to the potential reinsurer. Failure to disclose all risks is a breach of the reinsurance agreement. A reinsurer who signed without all the information still would be liable to the insured claimant but would have a claim against the ceder.[36](#co_footnote_I7da70602d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7da446e0d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). |
| [2](#co_fnRef_I7da446e2d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). Line 22, page 3 of Form 9 states the company’s “Surplus as regards Policyholders” which is a total of the company’s “paid up capital, plus gross paid in and contributed surplus, plus special surplus funds, plus unassigned surplus funds, less treasury stock at cost.” Sweat, Coinsurance and Reinsurance: A Look at Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing The 1987 and 1970 ALTA Policies, 417, 477 (Practicing Law Institute Real Estate Law & Practice Course Handbook Series No. 306, 1988). |
| [3](#co_fnRef_I7da46df0d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8 (Mar.–Apr. 1990). |
| [4](#co_fnRef_I7da46df1d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8 (Mar.–Apr. 1990). |
| [5](#co_fnRef_I7da46df2d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8 (Mar.–Apr. 1990). |
| [6](#co_fnRef_I7da46df3d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8 (Mar.–Apr. 1990). |
| [7](#co_fnRef_I7da46df4d6ee11ea8f41e1f6f2aa78) | The source of this example is Beasley, Lawyers and Title Insurance, in ABA Real Prop. Prob. & Tr. L. Sec., Attorneys’ Role in Title Insurance B-33 (1990). |
| [8](#co_fnRef_I7da46df5d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8 (Mar.–Apr. 1990). |
| [9](#co_fnRef_I7da46df6d6ee11ea8f41e1f6f2aa78) | *See* ALTA Facultative Reinsurance Agreement (4-6-90), reproduced at Appendix I. This form is subject to being amended again at the ALTA’s annual convention in September of 1994. The proposed amendment is discussed herein. |
| [10](#co_fnRef_I7da46df7d6ee11ea8f41e1f6f2aa78) | Beasley, Lawyers and Title Insurance, in ABA Real Prop. Prob. & Tr. L. Sec., Attorneys’ Role in Title Insurance, A-10 (1990). |
| [11](#co_fnRef_I7da49500d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8, 26 (Mar.–Apr. 1990). |
| [12](#co_fnRef_I7da49501d6ee11ea8f41e1f6f2aa78) | *See* ALTA Facultative Reinsurance Agreement, 2 (4-6-90), reproduced at Appendix I. This form is subject to being amended again at the ALTA’s annual convention in September of 1994. The proposed amendment is discussed herein. |
| [13](#co_fnRef_I7da49502d6ee11ea8f41e1f6f2aa78) | ALTA Facultative Reinsurance Agreement, 1, 2 (4-6-90). |
| [14](#co_fnRef_I7da49503d6ee11ea8f41e1f6f2aa78) | ALTA Facultative Reinsurance Agreement, 2 (4-6-90). |
| [15](#co_fnRef_I7da49504d6ee11ea8f41e1f6f2aa78) | *See* ALTA Facultative Reinsurance Agreement, 2 (4-6-90), reproduced at Appendix I. |
| [16](#co_fnRef_I7da49506d6ee11ea8f41e1f6f2aa78) | ALTA Facultative Reinsurance Agreement, 2 (4-6-90). |
| [17](#co_fnRef_I7da49507d6ee11ea8f41e1f6f2aa78) | ALTA Facultative Reinsurance Agreement, 3 (4-6-90). |
| [18](#co_fnRef_I7da49508d6ee11ea8f41e1f6f2aa78) | ALTA Facultative Reinsurance Agreement, 2 (4-6-90). |
| [19](#co_fnRef_I7da4bc10d6ee11ea8f41e1f6f2aa78) | Memorandum to ALTA Active Members, From Joseph C. Bonita, Chairman ALTA Title Insurance Forms Committee re Revised Facultative Reinsurance Agreement, Aug. 4, 1994. |
| [20](#co_fnRef_I7da4bc11d6ee11ea8f41e1f6f2aa78) | *See* ALTA Tertiary Facultative Reinsurance Agreement (Type 1) (April 6, 1990). |
| [21](#co_fnRef_I7da4bc12d6ee11ea8f41e1f6f2aa78) | *See* ALTA Facultative Reinsurance Agreement (Type II) (April 6, 1990). |
| [22](#co_fnRef_I7da4bc13d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing the 1987 and 1970 ALTA Policies, 439, 472 (Practicing Law Institute Real Estate Law & Practice Course Handbook Series No. 306, 1988). |
| [23](#co_fnRef_I7da4bc14d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing the 1987 and 1970 ALTA Policies, 439, 472. |
| [24](#co_fnRef_I7da690d0d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing the 1987 and 1970 ALTA Policies, 439, 472. |
| [25](#co_fnRef_I7da690d1d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing the 1987 and 1970 ALTA Policies, 439, 472. |
| [26](#co_fnRef_I7da690d2d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988: Comparing the 1987 and 1970 ALTA Policies, 439, 472. |
| [27](#co_fnRef_I7da6b7e0d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.230](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.230&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1574](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1574&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-113](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-113&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. Ann. § 38a-411](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-411&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-117](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-117&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 155/6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f6&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. §§ 500.632](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.632&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [500.7308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7308&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Ann. Stat. § 381.065](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.065&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (held unconstitutional due to overinclusive title of bill, but proposed amendments would still permit title insurers to obtain reinsurance, *see* Mo. Sen. 953, 93d Gen. Assembly, 2d Reg. Sess. (Feb. 22, 2006)); [N.H. Rev. Stat. Ann. §§ 416-A:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a2&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [416-A:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a13&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-20&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.13&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-20&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.C. Code Ann. § 38-75-950](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-950&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-312](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-312&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [La. Stat. Ann. § 22:2092.4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a2092.4&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2551.302](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.302&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [28](#co_fnRef_I7da6b7e1d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.230](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.230&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1574](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1574&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. §§ 10-3-102](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-3-102&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10-11-113](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-113&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. Ann. § 38a-411](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-411&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-117](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-117&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [215 Ill. Comp. Stat. Ann. § 155/6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f6&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7308&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mo. Ann. Stat. §§ 381.055](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.055&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [381.065](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.065&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (held unconstitutional due to overinclusive title of bill, but proposed amendments would still permit title insurers to reinsure title policies issued by other companies, Mo. Sen. 953, 93d Gen. Assembly, 2d Reg. Sess. (Feb. 22, 2006)); [N.H. Rev. Stat. Ann. §§ 416-A:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a2&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [416-A:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a13&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-20&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.13&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pa. Stat. Ann. tit. 40, § 910-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PS40S910-20&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.C. Code Ann. § 38-75-950](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-950&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-312](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-312&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Tex. Ins. Code Ann. § 2551.304](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2551.304&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [29](#co_fnRef_I7da6def0d6ee11ea8f41e1f6f2aa78) | *See* [Alaska Stat. § 21.66.230](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.230&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1574](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1574&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ark. Code Ann. § 23-62-202](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000004&cite=ARSTS23-62-202&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-113](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-113&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-511](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-511&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a13&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-20&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [30](#co_fnRef_I7da6def1d6ee11ea8f41e1f6f2aa78) | *See* [Del. Code Ann. tit. 18, § 911](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S911&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-511](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-511&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mich. Comp. Laws Ann. § 500.7308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MIST500.7308&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Stat. Ann. § 17:46B-20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-20&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  The National Association of Insurance Commissioners (NAIC) refuses to count reinsurance ceded to a title insurer that is domiciled in an “unaccredited” state on the ceding company’s balance sheet. The NAIC offers accreditation only to states that have adopted insurance acts with language at least as strict as the NAIC model acts and that have put in place the personnel, budget, and regulatory authority to enforce the adopted models. McCarthy, NAIC: Sharpening the Focus on the Title Industry, 72 Title News 11, 12 (March/April 1993). |
| [31](#co_fnRef_I7da6def2d6ee11ea8f41e1f6f2aa78) | *See* [Cal. Ins. Code § 12375](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12375&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. Ann. § 10-11-113](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-113&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 911](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S911&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-511](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-511&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 416-A:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS416-A%3a13&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.13&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [32](#co_fnRef_I7da6def3d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12385](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12385&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ind. Code § 27-7-3-16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS27-7-3-16&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer wishing to retire from business must furnish department with evidence of no further outstanding liability or of reinsurance with a solvent company); [Wyo. Stat. § 26-23-310](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-310&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [33](#co_fnRef_I7da6def4d6ee11ea8f41e1f6f2aa78) | *See* [Ariz. Rev. Stat. § 20-1571](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1571&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 1071.5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS1071.5&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-409](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-409&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-115](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-115&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6405(g)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6405&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. §§ 157, 910-17. |
| [34](#co_fnRef_I7da70600d6ee11ea8f41e1f6f2aa78) | *See* [Cal. Ins. Code § 622](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS622&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.D. Cent. Code § 26.1-31-04](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST26.1-31-04&originatingDoc=If4f539466fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [35](#co_fnRef_I7da70601d6ee11ea8f41e1f6f2aa78) | Beasley, Reinsurance, in Practicing Law Institute, Title Insurance 1990: The basics and Beyond, 339, 344 (Sept. 1990). |
| [36](#co_fnRef_I7da70602d6ee11ea8f41e1f6f2aa78) | Beasley, Lawyers and Title Insurance, in ABA Real Prop. Prob. & Tr. L. Sec., Attorneys’ Role in Title Insurance, B-34 (1990). |

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2 Title Ins. Law § 18:39 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:39. Regulation of coinsurance and reinsurance—Coinsurance

Coinsurance involves multiple companies acting as primary insurers for stated proportions of the total insurance coverage. Each company issues a separate policy to insure its allocated amount of the risk and is primarily liable on its own policy.[1](#co_footnote_I7db20280d6ee11ea8f41e1f6f2a) Of course, any individual coinsurer may choose to purchase reinsurance on its share of the transaction.[2](#co_footnote_I7db20281d6ee11ea8f41e1f6f2a) A coinsurer may be limited from covering its full share of the risk by statutory limitations, lenders’ limits, or its own limits.

When coinsurance is issued, one approach is for one coinsurer to act as lead insurer. The lead insurer takes responsibility for searching the title and making underwriting decisions, subject to the other coinsurers’ approval. Another approach is for each coinsurer to perform its own [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), examination, and underwriting. The coinsurers then reconcile their policies. When this second approach is used, the lead insurer merely coordinates the issuance of all the coinsurers’ policies.

A third approach is the issuance of one policy that the coinsurers all support with a coinsurance endorsement. The [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (hereinafter ALTA) produces a standard endorsement form for this purpose.[3](#co_footnote_I7db20282d6ee11ea8f41e1f6f2a)

Coinsurance may begin either with sharing the first dollar of insurance or with sharing an “excess amount.” Coinsurers’ liability may be joint and several, proportionate, coordinate or a combination.[4](#co_footnote_I7db22990d6ee11ea8f41e1f6f2a) The most common way to write coinsurance is as “straight” or “dollar one” coinsurance.[5](#co_footnote_I7db22991d6ee11ea8f41e1f6f2a) This also may be called “specific dollar” coinsurance. With this method, multiple title insurers each issue a policy in favor of the same insured covering the same interest in land, each assuming a specific portion of liability for the total risk. The portions of liability accepted may be equal or proportionate and each insurer will be responsible for only that portion of any loss which occurs.[6](#co_footnote_I7db22992d6ee11ea8f41e1f6f2a) For instance, two title insurers could coinsure a $3 million transaction by dividing the risk between them at $2 million and $1 million.[7](#co_footnote_I7db22993d6ee11ea8f41e1f6f2a) If a $1.5 million loss occurred, it would be paid in the two-to-one ratio.[8](#co_footnote_I7db22994d6ee11ea8f41e1f6f2a)

With joint and several coinsurance, each title insurer is responsible for the same risks and has the same liability.[9](#co_footnote_I7db22995d6ee11ea8f41e1f6f2a) Each company’s liability begins at the first dollar and continues for the full amount of insurance stated in the policy. This does not mean that the insured could be paid twice the amount of a loss but does mean that all of the loss could be paid by one insurer rather than shared by them. The paying company would then seek a partial recovery from its coinsurer.

There also is what is called excess coinsurance. This involves the originating insurer taking a primary liability up to a stated amount with the excess coinsurer issuing a policy directly to the insured for the excess or for a stated proportional share of the excess.[10](#co_footnote_I7db22996d6ee11ea8f41e1f6f2a) Essentially, the division of liability under excess coinsurance is the same as in a reinsurance agreement—i.e., the originating company retains primary liability while the coinsurers accept only a secondary liability.[11](#co_footnote_I7db22997d6ee11ea8f41e1f6f2a) The difference is that each coinsurer issues its own policy directly to the insured.

Title insurers also may combine reinsurance and coinsurance in one transaction. For example, they may use joint and several coinsurance for the first $1 million of a policy to be issued. The originating title insurer then might retain primary liability for any amount over $1 million, up to its single risk maximum. If the value of the real property interest being insured is greater than the originating insurer’s single risk limit, then the originating insurer might obtain reinsurance.[12](#co_footnote_I7db22998d6ee11ea8f41e1f6f2a)

With reinsurance, a written agreement is used. With coinsurance a separate written agreement can be used, but more often, the insurers will add either endorsements to the policies or “write-ups” in the policies which state the amount of liability being assumed under each policy,[13](#co_footnote_I7db22999d6ee11ea8f41e1f6f2a) give evidence of the coinsurance, and tie the coinsured policies together.[14](#co_footnote_I7db250a0d6ee11ea8f41e1f6f2a)

In deciding whether to specify the use of either coinsurance or reinsurance in the transaction, an insured should consider the pros and cons of each. First, obtaining coinsurance can be more expensive and complicated for an insured than reinsurance. When a risk is reinsured, the title insurance applicant deals only with the ceder. With some coinsurance methods, on the other hand, the insured may have to deal with several coinsurers and with each coinsurer’s individual underwriting decisions. A second drawback to coinsurance is that coordinating the issuance of the policies can be complex and may delay closing the real property transaction. A third disadvantage to coinsurance, as compared to reinsurance, comes when the insured has a claim. Each coinsurer may want to individually investigate the claim and decide whether it will pay. No coinsurer is bound by the actions of the others.[15](#co_footnote_I7db250a1d6ee11ea8f41e1f6f2a)

On the other hand, an advantage of coinsurance mentioned by some attorneys who request it is that there is no question that the insured will have direct access to each coinsurer.[16](#co_footnote_I7db250a2d6ee11ea8f41e1f6f2a) This is not of great concern today, however, since the ALTA Facultative Reinsurance Agreement used in most reinsurance transactions expressly gives the insured direct access to the reinsurer if the insured is pursuing its claim against the ceder or if the ceder is in receivership. See [§ 18:38](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a38&originatingDoc=If4f539496fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§ 18:40](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a40&originatingDoc=If4f539496fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). A second advantage cited to coinsurance is that, since each coinsurer has the option of performing an independent title examination, the insured may have the advantage of more than one opinion on the status and marketability of the title. While this may sometimes be true, many times all coinsurers will rely upon the same title search or all searches may be made from the same title plant.[17](#co_footnote_I7db277b1d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7db20280d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8 (Mar.-Apr. 1990). |
| [2](#co_fnRef_I7db20281d6ee11ea8f41e1f6f2aa78) | Walton, Megabucks and Reinsurance, 69 Title News 8 (Mar.-Apr. 1990). |
| [3](#co_fnRef_I7db20282d6ee11ea8f41e1f6f2aa78) | *See* ALTA, Endorsement No. 114. |
| [4](#co_fnRef_I7db22990d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 465 (Practising Law Institute Real Estate Law & Practice Course Handbook Series No. 306, 1988). |
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| [9](#co_fnRef_I7db22995d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 465. |
| [10](#co_fnRef_I7db22996d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 465. |
| [11](#co_fnRef_I7db22997d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 469. |
| [12](#co_fnRef_I7db22998d6ee11ea8f41e1f6f2aa78) | Beasley, Co-Insurance, Practising Law Institute, Title Insurance 1990 The Basics and Beyond, 333, 336 (Sept. 1990). |
| [13](#co_fnRef_I7db22999d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 469 (Practising Law Institute Real Estate Law & Practice Course Handbook Series No. 306, 1988). The following is an example of policy language which may appear in the originating company’s policy if it retains a primary liability and also takes on a secondary liability with two companies accepting secondary liability as excess coinsurers:  This policy is issued contemporaneously with policy of (name of coinsurer) in the sum of $\_\_\_\_\_, and policy of (name of additional coinsurer) in the sum of $\_\_\_\_\_, and it is understood and agreed that for all loss or aggregate of losses against which said policies protect up to and including $(retained primary amount) of liability (originating insurer) under this policy shall be solely liable, and that for all loss or aggregate of losses over and above $(retained primary amount), said (originating insurer) shall only be liable for (fraction or percentage) of any such excess loss.  *See* Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 469. Language in the policies issued by two excess coinsurers accepting secondary liability would be similar to the following:  This policy is issued contemporaneously with policy of (originating insurer) in the sum of $\_\_\_\_\_, and policy of (the other secondary coinsurer) in the sum of $\_\_\_\_\_, and it is understood and agreed that (this coinsurer) does not assume any liability hereunder unless and until the loss or aggregate of losses against which said policies protect shall exceed $(amount of originating insurer’s retained primary liability) in which event (this coinsurer) shall bear only (fraction or percentage) of any such loss or aggregate of losses over and above $(amount of originating insurer’s retained primary liability).  Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From the Coinsurers or Reinsurers’ Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 469. |
| [14](#co_fnRef_I7db250a0d6ee11ea8f41e1f6f2aa78) | Beasley, Co-Insurance, Practising Law Institute, Title Insurance 1990 The Basics and Beyond, 333, 336 (Sept. 1990). |
| [15](#co_fnRef_I7db250a1d6ee11ea8f41e1f6f2aa78) | Beasley, Co-Insurance, Practising Law Institute, Title Insurance 1990 The Basics and Beyond, 333, 336 (Sept. 1990). The insured also must give notice of any claim to each coinsurer. However, notice to each reinsurer is also required if the parties used the 1990 ALTA Facultative Reinsurance Agreement. |
| [16](#co_fnRef_I7db250a2d6ee11ea8f41e1f6f2aa78) | Beasley, Co-Insurance, Practising Law Institute, Title Insurance 1990 The Basics and Beyond, 333, 336 (Sept. 1990). |
| [17](#co_fnRef_I7db277b1d6ee11ea8f41e1f6f2aa78) | Beasley, Co-Insurance, Practising Law Institute, Title Insurance 1990 The Basics and Beyond, 333, 336 (Sept. 1990). |

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2 Title Ins. Law § 18:40 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:40. Regulation of coinsurance and reinsurance—Insured’s right to enforce the contract of reinsurance or coinsurance

Under treaty reinsurance agreements and under facultative reinsurance agreements that do not have a direct access clause, the insured may have no right to enforce the reinsurance agreement directly against the reinsurer because of the lack of [**privity of contract**](http://practicallawconnect.thomsonreuters.com/Document/I59dceb47ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). The traditional rule states that even the insolvency of the original insurer does not change the nature of the reinsurer’s obligation so as to permit the insured to pursue the reinsurer directly.[1](#co_footnote_I7db92e70d6ee11ea8f41e1f6f2a) Whether an insured today may sue a reinsurer directly to recover on a loss when the agreement does not contain a provision giving the insured direct access to the reinsurer is uncertain. A Florida court in 1966 ruled in the context of general insurance as follows:

Reinsurance has been defined as a contract that one insurer makes with another to protect the first insurer from a risk he has already assumed. It is not a contract against loss by fire, accident or other hazard as provided in the original policy but is one against loss on account of an outstanding contract of insurance or a bond and thus is one to indemnify the original insurer for any loss it may sustain. Only if the contract contains a clear written assumption of liability to the original insured can the policyholder bring suit against the reinsurer.[2](#co_footnote_I7db9f1c0d6ee11ea8f41e1f6f2a)

Thus, without a direct access provision, to have standing to sue a reinsurer the insured likely would have to be recognized as a third party beneficiary of the reinsurance contract. The argument should succeed even with a treaty reinsurance agreement if the insurer and reinsurer have agreed to reinsure all risks over a certain dollar amount. This practice implies a continuing intent on the parts of the reinsurer and the reinsured to benefit the original insured.[3](#co_footnote_I7db9f1c1d6ee11ea8f41e1f6f2a) To avoid having to deal with this issue, the insured should ask either for the insertion of a direct access clause in the insurers’ reinsurance contract or for an endorsement on the original title policy from the reinsurer. Such an endorsement would create the privity of contract necessary for direct access.

The reason that the question of the insured’s access to a reinsurer will not often be raised today is because [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Facultative Reinsurance Agreement forms generally are used. See [§ 18:38](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a38&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The ALTA Facultative Reinsurance Agreement forms contain an express provision giving the insured direct access to the reinsurer. The direct access clause lets an insured seek payment directly from the reinsurer in the event of a claim exceeding the ceder’s primary liability, if the insured also has pursued or is pursuing a claim against the ceding insurer or if the ceder is in receivership. The reinsurer may assert any defense to liability which the ceder has against the insured but may not assert against the insured defenses or counterclaims which the reinsurer may have against the ceder.

The discussion thus far in this subsection has pertained to facultative reinsurance and treaty reinsurance. Facultative reinsurance and treaty reinsurance are agreements to indemnify the original insurer.[4](#co_footnote_I7dba18d1d6ee11ea8f41e1f6f2a) Even where it includes a clause giving the insured direct access to the reinsurer in the event of the ceder’s failure to pay, the reinsurance agreement does not constitute a [**novation**](http://practicallawconnect.thomsonreuters.com/Document/I2104deb5ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the original insurer’s agreement to indemnify. The exception to this rule is a type of reinsurance called “assumption reinsurance.” With assumption reinsurance, the reinsurer is substituted for the ceder and becomes directly liable to the insured. An assumption reinsurance agreement is a novation which actually creates privity of contract between the reinsurer and the insured.[5](#co_footnote_I7dba18d2d6ee11ea8f41e1f6f2a) In fact, the original policy usually is surrendered in this situation and a new one between the insured and the reinsurer is substituted. Thus, the assumption reinsurance contract operates to discharge the original insurer from its obligation as to the reinsured amount. The original insured must expressly consent to the use of an assumption reinsurance agreement.[6](#co_footnote_I7dba18d3d6ee11ea8f41e1f6f2a)

An acquisition of an insurer’s assets is sometimes loosely referred to as reinsurance. In this situation the acquiring or merging insurer agrees to assume the liabilities of the original insurer and becomes subject to an action not dependent on the original policy or on any reinsurance contract.[7](#co_footnote_I7dba18d4d6ee11ea8f41e1f6f2a)

The insured does have direct rights against a coinsurer because the coinsurer issues a separate policy for its portion of the risk directly to the insured. Coinsurance involves multiple companies acting as primary insurers for stated proportions of the total insurance coverage. Each company issues a separate policy to insure its allocated amount of the risk and is primarily liable on its own policy. See [§ 18:39](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a39&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

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| **Footnotes** | |
| [1](#co_fnRef_I7db92e70d6ee11ea8f41e1f6f2aa78) | [Burke, Law of Title Insurance § 6.7 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=0152721&cite=TITLEINSLs6.7&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). citing 19 Couch on Insurance (2d ed.) § 959. |
| [2](#co_fnRef_I7db9f1c0d6ee11ea8f41e1f6f2aa78) | [McDonough Const. Corp. v. Pan Am. Sur. Co., 190 So. 2d 617, 619 (Fla. Dist. Ct. App. 1st Dist. 1966)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1966115055&pubNum=0000735&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_619&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_619) (footnotes omitted). *See also* [Clark and Co., Inc. v. Department of Ins. as Receiver of Eastern Ins. Co., 436 So. 2d 1013, 1015 (Fla. Dist. Ct. App. 1st Dist. 1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983137212&pubNum=0000735&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_1015&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_1015); [Mitchell v. State ex rel. Williams, 223 So. 2d 792, 793-94 (Fla. Dist. Ct. App. 1st Dist. 1969)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1969139962&pubNum=0000735&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_793&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_793); [First Nat. Bank of Kansas City v. Higgins, 357 S.W.2d 139 (Mo. 1962)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1962129832&pubNum=0000713&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Homan v. Employers Reinsurance Corp., 345 Mo. 650, 136 S.W.2d 289, 127 A.L.R. 163 (1939)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1940118103&pubNum=0000104&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Reid v. Ruffin, 314 Pa. Super. 46, 460 A.2d 757 (1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983119261&pubNum=0000162&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [503 Pa. 458, 469 A.2d 1030, 42 A.L.R.4th 1117 (1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1984102214&pubNum=0000849&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7db9f1c1d6ee11ea8f41e1f6f2aa78) | *See* [Burke, Law of Title Insurance § 6.7.1 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=0152721&cite=TITLEINSLs6.7.1&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [Sawyer v. Sunset Mut. Life Ins. Co., 8 Cal. 2d 492, 66 P.2d 641 (1937)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1937119036&pubNum=0000661&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the original insured was a third-party beneficiary); [Homan v. Employers Reinsurance Corp., 345 Mo. 650, 136 S.W.2d 289, 127 A.L.R. 163 (1939)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1940118103&pubNum=0000104&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [First Nat. Bank of Kansas City v. Higgins, 357 S.W.2d 139 (Mo. 1962)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1962129832&pubNum=0000713&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *But see* [Fontenot v. Marquette Cas. Co., 258 La. 671, 247 So. 2d 572, 578 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971134173&pubNum=0000735&originatingDoc=If4f5394c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_578&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_578). |
| [4](#co_fnRef_I7dba18d1d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From The Coinsurers or Reinsurers Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 477 (Practising Law Institute Real Estate Law & Practice Course Handbook Series No. 306, 1988). |
| [5](#co_fnRef_I7dba18d2d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From The Coinsurers or Reinsurers Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 477. |
| [6](#co_fnRef_I7dba18d3d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From The Coinsurers or Reinsurers Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 477. |
| [7](#co_fnRef_I7dba18d4d6ee11ea8f41e1f6f2aa78) | Sweat, Coinsurance and Reinsurance: A Look At Title Insurance Policies From The Coinsurers or Reinsurers Perspective, in Title Insurance 1988 Comparing the 1987 and 1970 ALTA Policies, 417, 477. |

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2 Title Ins. Law § 18:41 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:41. Unfair claims practices and consumer protection acts

Several states have statutes which prohibit a title insurer from unfairly discriminating between insureds or property having similar risk characteristics in rates charged, benefits payable, or any terms or conditions.[1](#co_footnote_I7dc45200d6ee11ea8f41e1f6f2a) Many states also have adopted Unfair Claims Settlement Practices statutes which provide for recovery of attorney’s fees, damages, or interest in suits against insurers to recover benefits under insurance policies. Additionally, Consumer Protection Acts, such as Unfair and Deceptive Trade Practices Acts, that do not specifically mention insurance claims settlement practices have been held to apply to the sale of title insurance.[2](#co_footnote_I7dc45201d6ee11ea8f41e1f6f2a)

The Texas courts have thoroughly analyzed the applicability of such consumer protection laws to title insurers’ practices in the issuance of title insurance commitments and policies. These cases are examined in [§ 12:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a8&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise which discusses whether an insured has an action for a title insurer’s failure to disclose title defects under either a state’s unfair insurance claims settlement statute or unfair trade practices statute.

[Section 10:43](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a43&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra* analyzes insureds’ ability to recover damages and attorney fees from title insurers under state statutes for unfair insurance claims settlement activities or unfair trade practices. And, §§ [15:22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a22&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [15:24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a24&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) consider the nexus between unfair and deceptive practices and anti-trust liability of title insurers’.

It has been held that a title insurer may not assert its insureds’ rights to recover under a consumer protection act.[3](#co_footnote_I7dc4c732d6ee11ea8f41e1f6f2a) The court reasoned that a title insurer is a seller of insurance, not the consumer that the legislature intended to protect from unethical business practices. Thus, though insurers generally may be subrogated to or take assignments of their insureds’ causes of actions against those responsible for a loss,[4](#co_footnote_I7dc4c733d6ee11ea8f41e1f6f2a) the court concluded that to permit insurers to assert insureds’ claims for treble damages under the state consumer protection laws would result in windfalls to insurers, rather than redress for consumers who were deceived by unfair business practices.

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| **Footnotes** | |
| [1](#co_fnRef_I7dc45200d6ee11ea8f41e1f6f2aa78) | [Nev. Rev. Stat. Ann. § 686A.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST686A.130&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-16-17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-16-17&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 2005 Utah. Laws 185. |
| [2](#co_fnRef_I7dc45201d6ee11ea8f41e1f6f2aa78) | Unfair Claims Settlement Practices Statutes:  [Ala. Code § 27-12-24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS27-12-24&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alaska Stat. § 21.36.125](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.36.125&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-461](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-461&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 790.03](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS790.03&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Colo. Rev. Stat. § 10-3-1104](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-3-1104&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-816](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-816&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Del. Code Ann. tit. 18, § 2304(16)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT18S2304&originatingDoc=If4f5394f6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. 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2 Title Ins. Law § 18:42 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:42. Restrictions against controlled business

Controlled business is business referred to a title insurance underwriter or agent by a producer of title business or an associate of a producer, where the producer or associate has a financial interest in the title insurance underwriter or agent.[1](#co_footnote_I7dcba500d6ee11ea8f41e1f6f2a) Sections [2:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a6&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [3:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a1&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [3:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a19&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [15:24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a24&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discuss potential negative consequences to the title insurance industry and to the public when providers of other real estate settlement services own or control title insurance underwriters or agencies. Several state legislatures have responded to concerns about the conflicts of interest discussed in §§ [2:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a6&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [3:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a1&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [3:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs3%3a19&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [15:24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a24&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) by limiting the amount of business a controlled title insurance agency can receive from parent or sister companies. California, Michigan, Colorado, Connecticut, Wyoming, Wisconsin, Utah, Nebraska, and Kansas have statutorily limited the amount of controlled business that title insurance agencies may receive to a small percentage of the agencies’ gross operating revenues.[2](#co_footnote_I7dcbcc16d6ee11ea8f41e1f6f2a)

The Model Title Insurance Act, promulgated by the National Association of Insurance Commissioners in 1982, also would limit the amount of business that a title insurer may conduct with another real estate settlement service provider to no more than 20% of the title insurer’s gross operating revenues in a given calendar year.[3](#co_footnote_I7dcbf320d6ee11ea8f41e1f6f2a) The Model Act also prohibits the acceptance of business if the title insurer or agent has reason to believe that the applicant was referred by a person with a financial interest in the title insurer or agent, unless the insurer, agent, or referrer discloses the financial interest to the applicant in writing.[4](#co_footnote_I7dcbf321d6ee11ea8f41e1f6f2a) Additionally, the Act requires title insurers and agents to make an annual disclosure to state regulators of the names of persons who hold a financial interest in the insurer or agent.[5](#co_footnote_I7dcbf322d6ee11ea8f41e1f6f2a) Furthermore, a real estate settlement service provider is forbidden to tie the closing of any real estate transaction to the ordering of title insurance from any particular title insurer or title insurance agent.[6](#co_footnote_I7dcbf323d6ee11ea8f41e1f6f2a) Neither may a real estate settlement service provider allow a rebate on the price of any service on the condition that title insurance is obtained through a particular title insurer or agent.[7](#co_footnote_I7dcbf324d6ee11ea8f41e1f6f2a)

Wyoming has adopted provisions similar to those of the Model Act.[8](#co_footnote_I7dcbf325d6ee11ea8f41e1f6f2a) Wyoming statutes and regulations prohibit any title insurance underwriter or agent from accepting an order for title insurance if the applicant was referred by a producer of title business or associate thereof who has a financial interest in the title insurance underwriter or agent, unless the producer or associate disclosed the financial interest to the applicant. The disclosure must have been made in writing on forms prescribed by the insurance commissioner. Each title insurance underwriter and agent also is required to report to the commissioner any producers of title business and their associates who have held a financial interest in the title insurer or agent during the preceding calendar year. Furthermore, a title insurance underwriter or agent is prohibited from accepting an order for title insurance if the transaction will constitute controlled business and if 25% or more of its gross operating revenue in that calendar year was derived from controlled business.[9](#co_footnote_I7dcbf326d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7dcba500d6ee11ea8f41e1f6f2aa78) | Cleasby, Controlled Business Operations in the Title Insurance Industry, Report to the Commissioner of Insurance, State of Wisconsin, 2 (July 31, 1987). |
| [2](#co_fnRef_I7dcbcc16d6ee11ea8f41e1f6f2aa78) | California restricts controlled business to 50%, Michigan to 15%, Colorado and Utah to 33 1/3%, Wyoming to 25%, and Nebraska to 20%. Cleasby, Controlled Business Operations in the Title Insurance Industry, Report to the Commissioner of Insurance, State of Wisconsin, at 5–6 (July 31, 1987); Connecticut also restricts controlled business to 20%. [Conn. Gen. Stat. § 38a-416](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-416&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7dcbf320d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act. |
| [4](#co_fnRef_I7dcbf321d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act § (A). |
| [5](#co_fnRef_I7dcbf322d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act § (B). |
| [6](#co_fnRef_I7dcbf323d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act § 30. |
| [7](#co_fnRef_I7dcbf324d6ee11ea8f41e1f6f2aa78) | NAIC Model Title Insurance Act § 30(1). |
| [8](#co_fnRef_I7dcbf325d6ee11ea8f41e1f6f2aa78) | *See* [Wyo. Stat. §§ 26-23-301 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-301&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Wyo. Ins. Reg. Ch. 3, § 5. |
| [9](#co_fnRef_I7dcbf326d6ee11ea8f41e1f6f2aa78) | Wyo. Ins. Reg. Ch. 3, § 7; *see also* [Kan. Stat. Ann. § 40-2404(f) to (i)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-2404&originatingDoc=If4f539526fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 18:43 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 18. State Regulation of Title Insurance**

§ 18:43. Restrictions against rebates and inducements

Chapter 21 of this treatise examines the federal government’s efforts to eliminate unnecessary costs to the real estate-buying public by passing the Real Estate Settlement Procedures Act. RESPA prohibits real estate settlement service providers from paying value to other providers to induce the referral of services.

States also have passed laws to prohibit title insurers, their agents, and employees from offering or paying inducements, rebates, or reduced fees to obtain referrals of title insurance business from other real estate settlement service providers.[1](#co_footnote_I7ddae740d6ee11ea8f41e1f6f2a) These statutes and regulations bar both direct payments—e.g., a title insurer’s permitting the loan closer to retain a percentage of the title insurance premium paid by the borrower or seller—and indirect payments—e.g., a title company’s providing free office space to a real estate broker or mortgage lender. For example, the New York State Insurance Code provides: “[n]o title insurance corporation or any other person acting for or on behalf of it, shall make any rebate of any portion of the fee, premium, or charge made … as an inducement for, or as compensation for, any title insurance business.”[2](#co_footnote_I7ddb3560d6ee11ea8f41e1f6f2a) The New York State Department of Financial Services adopted implementing regulations in 2018, after a five-year investigation of the title insurance industry had “found that lavish gifts were routinely being offered in anticipation of receiving business” which “led to rising costs for consumers.”[3](#co_footnote_I7ddb3561d6ee11ea8f41e1f6f2a) These regulations prohibit use of “high-priced tickets, meals, lavish gifts and strip clubs as inducements for title insurance business” and passing of such improper expenditures on to consumers.[4](#co_footnote_I7ddb3562d6ee11ea8f41e1f6f2a) The New York State Land and Title Association, the trade group for title insurers, filed suit to overturn these regulations, calling such gifts standard practice and arguing that they should be allowed to continue including them as expenses recoverable from consumers through insurance rates. The Appellate Division of the New York State Supreme Court upheld the great majority of these regulations.[5](#co_footnote_I7ddb3563d6ee11ea8f41e1f6f2a)

Another example is anti-kickback laws in Michigan which were held to have been violated when title insurance agencies paid “dividends” to real estate broker “shareholders” for their referral of title insurance business.[6](#co_footnote_I7ddb3564d6ee11ea8f41e1f6f2a)

In states where there is not a specific state anti-kickback law, such practices still may violate state Consumer Protection and Deceptive Practices Acts.[7](#co_footnote_I7ddb5c70d6ee11ea8f41e1f6f2a) Penalties for unlawful rebates may include fines, civil liability, or criminal charges.[8](#co_footnote_I7ddb5c71d6ee11ea8f41e1f6f2a)

An underwriter’s payment of a commission to a title insurance agent generally is not automatically considered an unlawful rebate.[9](#co_footnote_I7ddb5c72d6ee11ea8f41e1f6f2a) Neither is division of fees among a title insurance underwriter and its agent or among two or more title insurance underwriters or agents generally considered an unlawful rebate.[10](#co_footnote_I7ddb5c73d6ee11ea8f41e1f6f2a)

A title insurance underwriter may be vicariously liable for its local agent’s unlawful inducements if the agency agreement gives the agent the authority to solicit and effectuate policies on the underwriter’s behalf.[11](#co_footnote_I7ddb8380d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7ddae740d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.310](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.310&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1586](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1586&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12404](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12404&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Cal. Ins. Dept. Bulletins 69-11, 70-6, 80-12, 80-12A; [Colo. Rev. Stat. § 10-11-108](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000517&cite=COSTS10-11-108&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [3 Colo. Code Regs. 702-3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1016634&cite=3COADC702-3&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (amended regulation 3-5-1, § 5); [Conn. Gen. Stat. § 38a-414](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-414&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 626.9541(h)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.9541&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (no title insurer or agent or employee thereof may pay, allow, give, or offer an inducement to title insurance or after such insurance has been effected, any unlawful rebate or abatement of charge, any special favor or advantage); [Haw. Rev. Stat. § 431:20-118](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-118&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Idaho Code § 41-2708](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Idaho Dep’t of Ins. Reg. 18.01.39, § 011 (it is unlawful for a title entity to sell, exchange with any licensed realtor or mortgage lender, attorney, construction business, any shares of stock or interest in the title entity as an inducement), Idaho Dep’t of Ins. Reg. 18.01.56, § 011 (title entity may not provide things of value to a producer of title business, except as otherwise allowed), Idaho Dep’t of Ins. Reg. 18.01.56, § 012 (providing consumer information in a listing package relating to ownership and title status of real property, tax information, parcel information is not an illegal rebate or inducement), Idaho Dep’t of Ins. Reg. 18.01.56, § 013 (no advertisement may be placed in a publication published or distributed by a producer of title business, but publication in certain trade association pamphlets is allowed), Idaho Dep’t of Ins. Reg. 18.01.56, § 014 (self-promotional items given to a producer of title business is allowed if the item costs less than $5, not to include food or beverage), Idaho Dep’t of Ins. Reg. 18.01.56, § 015 (business entertainment is allowed only for a single day of meals and/or events not exceeding a cost of $50 per person); [215 Ill. Comp. Stat. § 155/24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f24&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 1994 Kan. Sess. Laws 302, § 40-2404; [Kan. Admin. Regs. 40-3-42](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1007871&cite=KSADC40-3-42&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (the following acts constitute rebates or unlawful inducements in the marketing of title insurance: (1) disbursement of funds prior to actual deposit thereof with the escrow agent, (2) disbursement of escrow funds before the conditions of the escrow are met, (3) making a charge for any title commitment which does not have a reasonable relation to the cost of production of the commitment or is less than the minimum fee or charge for the type of policy applied for, (4) paying a producer of title business to make an inspection of property, (5) any transaction in which any person receives securities of the title entity at prices below normal market price, (6) charging a subdivision discount rate which is not applicable in the transaction because the volume required to qualify for discount includes ineligible lots, (7) paying for, offering to pay for, the cancellation fee or fee on behalf of any producer of title business before or after inducing the producer to cancel an order with another title entity, (8) giving, receiving or guaranteeing any loan with any producer of title business …); [Mich. Comp. Laws § 500](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MISTD&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))-2066; [Mo. Rev. Stat. § 381.025](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000229&cite=MOST381.025&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. §§ 33-18-210](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-18-210&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [33-25-401](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-401&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [Mont. Admin. R. 6.6.2203](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012680&cite=MTADC6.6.2203&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (the following are inducements: (a) furnishing title information in written form without charge or at a charge less than the applicable rate filing, (b) furnishing information packets, listing kits, or hybrid forms of title information, (c) paying or offering to pay any charges which constitute an obligation of any producer of title business for the cancellation of an existing title insurance order with a competing company, (d) furnishing escrow, closing, or settlement services for a charge less than the reasonable cost of providing the services, (e) deferring any payment for insurance or services otherwise due to become applicable to the payment for insurance or services not yet furnished, (f) furnishing or offering to furnish services not reasonably related to bona fide insurance or escrow, closing, or settlement transactions, (g) renting or offering to rent as either landlord or tenant at a rental favorable to any producer of title business or to any insurer or agent of title insurance, (h) providing or paying for the sale of title insurance through credit extensions, prizes, vacations, travel expenses, membership or registration fees, or lodging, (i) depositing funds with a credit or lending institution based on an understanding that title insurance business will be referred to a particular agent or insurer); [Nev. Rev. Stat. § 686A.130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST686A.130&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 417:4(IX)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS417%3a4&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. §§ 17:46B-34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-34&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [17:46B-35](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-35&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-16-17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-16-17&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.Y. Ins. Law § 6409](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *construed in* [New York State Land Title Association, Inc. v. New York State Department of Financial Services, 178 A.D.3d 611, 117 N.Y.S.3d 16 (1st Dep’t 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049929047&pubNum=0007980&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.C. Gen. Stat. § 58-27-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-27-5&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.26&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Okla. Stat. tit. 74, § 227.28](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT74S227.28&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (inducements paid by abstractors are prohibited); [Or. Rev. Stat. § 746.055](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000534&cite=ORSTS746.055&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Or. Admin. R. 836-080-0315](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013613&cite=ORADC836-080-0315&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [836-080-0320](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013613&cite=ORADC836-080-0320&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A title company shall not, directly or indirectly, give or attempt to give any thing of value to an intermediary,” except as otherwise permitted, and except if the thing of value (but not money) has a net cost to the company of $2 or less per thing or person), [Or. Admin. R. 836-080-0325](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013613&cite=ORADC836-080-0325&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer or title agent may “give a thing of value to an intermediary in connection with an activity sponsored only by the title company if the net cost to the title company is $75 or less per individual attending, when five or fewer individuals actually attend and when one of the individuals is an employee of the title company” and in certain other situations in which the net cost per person is limited to a specific amount), [Or. Admin. R. 836-080-0335](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013613&cite=ORADC836-080-0335&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (a title insurer or agent may give plants/flowers not exceeding $25 in value for an open house of a customer or intermediary or as a condolence), [Or. Admin. R. 836-080-0360](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013613&cite=ORADC836-080-0360&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (insurer or agent shall not have any of its employees working in a workplace location owned or leased by an intermediary unless the space is separate from and can be secured against access by other premises occupants, the rental payment is consistent with market, and the space is open to the conduct of business with any intermediary or consumer); 40 Pa. Cons. Stat. § 910-31; [31 Pa. Code § 125.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=31PAADCS125.1&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); S.C. Ins. Dept. Reg. 69-18 § 2; [S. C. Code Ann. § 38-57-130](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-57-130&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.D. Codified Laws Ann. § 58-25-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-13&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tenn. Code Ann. § 56-35-119](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS56-35-119&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2502.051](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2502.051&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-23a-402(2)(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23A-402&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Va. Code Ann. § 38.2-4614](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4614&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [W. Va. Code § 33-11-4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS33-11-4&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wash. Rev. Code § 48.29.210](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.210&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Wash. Admin. Code 284-29-200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003807&cite=WAADC284-29-200&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [284-29-260](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003807&cite=WAADC284-29-260&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussed in [Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r, 178 Wash. 2d 120, 309 P.3d 372 (2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031199016&pubNum=0004645&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-322](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-322&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See also* [Fitzgerald v. Chicago Title & Trust Co., 72 Ill. 2d 179, 20 Ill. Dec. 581, 380 N.E.2d 790 (1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978140182&pubNum=0000578&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (payment of a rebate to lenders of 10% of title insurance premiums referred by such lender violates both Illinois Consumer Fraud and Deceptive Practices Act and RESPA). |
| [2](#co_fnRef_I7ddb3560d6ee11ea8f41e1f6f2aa78) | [N.Y. Ins. Law § 6409(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See also* [Cal. Ins. Code § 12404(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12404&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Tex. Ins. Code Ann. § 9.30; [Fla. Stat. § 626.9541(1)(h)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.9541&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-401(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-401&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-23-404(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23-404&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kan. Stat. § 40-2404b(14)(a) & (b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-2404B&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (1986); and [Wash. Rev. Code § 48.29.210](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.210&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Wash. Admin. Code 284-29-200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003807&cite=WAADC284-29-200&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [284-29-260](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003807&cite=WAADC284-29-260&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussed in [Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r, 178 Wash. 2d 120, 309 P.3d 372 (2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031199016&pubNum=0004645&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See, generally*, McDonald, Premium Splitting, Controlled Business and Ethical Considerations: Lawyers Writing Title Insurance, 1990 PLI Real Estate Law Practice Course Handbook, 358 (1990). |
| [3](#co_fnRef_I7ddb3561d6ee11ea8f41e1f6f2aa78) | *Wining-and-dining ban on title insurance industry reinstated by Appellate court, https://therealdeal.com/2019/01/15* (last visited 1/16/2019). |
| [4](#co_fnRef_I7ddb3562d6ee11ea8f41e1f6f2aa78) | *Court reverses ruling, sides with Cuomo against title insurance firms, https://www.crainsnewyork.com/real-estate/court-reverses-ruling-sides-cuomo-against-title-insurance-firms* (last visited 1/16/2019). |
| [5](#co_fnRef_I7ddb3563d6ee11ea8f41e1f6f2aa78) | [New York State Land Title Association, Inc. v. New York State Department of Financial Services, 178 A.D.3d 611, 117 N.Y.S.3d 16 (1st Dep’t 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049929047&pubNum=0007980&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7ddb3564d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. Chicago Title Ins. Co., 161 Mich. App. 183, 409 N.W.2d 774 (1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987103293&pubNum=0000595&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7ddb5c70d6ee11ea8f41e1f6f2aa78) | Werner, Present Climate for Title Agents, in ABA Real Prop. Prob. & Tr. L. Sec., Attorneys’ Role in Title Insurance, E-28 (1990). |
| [8](#co_fnRef_I7ddb5c71d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.340](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.340&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (a person who gives an unlawful rebate or inducement is liable to the state for five times the amount or value of the rebate or inducement); [Ariz. Rev. Stat. Ann. § 20-1589](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1589&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (any title insurer or title insurance agent knowingly making an unlawful rebate is guilty of a misdemeanor); [Cal. Ins. Code § 12409](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12409&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (any title insurer making an unlawful rebate is liable for five times the amount of the unlawful rebate, recoverable by the insurance commissioner); [Haw. Rev. Stat. § 431:20-124](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-124&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (liability for five times the amount of the rebate, collected by the agency); [Idaho Code § 41-2708](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS41-2708&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (person or entity giving the unlawful rebate or inducement is liable for three times the amount of the unlawful rebate or inducement); Idaho Dep’t of Ins. Reg. 18.01.56, § 018 (penalties for illegal inducements or rebates may include civil liability, administrative penal ties, suspension, or revocation of license); [215 Ill. Comp. Stat. § 155/24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f24&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (violation of prohibition on inducements and rebates is a misdemeanor); [Mich. Comp. Laws § 500](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000043&cite=MISTD&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))-2066 (violation results in revocation of license or certificate of authority; also guilty of misdemeanor, with fine of up to $100 per violation and imprisonment at the court’s discretion); [Mont. Code Ann. § 33-25-402](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-402&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (violation results in penalty of liability equal to three times the amount paid for the title insurance business); [Nev. Rev. Stat. § 686A.140](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST686A.140&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (liable to state for five times the amount of any unlawful rebate, recoverable by the agency); [N.J. Rev. Stat. § 17:46B-37](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-37&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (liable to state for up to five times the amount of the unlawful commission or rebate); [N.M. Stat. Ann. § 59A-16-18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-16-18&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (person who knowingly receives or agrees to receive unlawful rebates is guilty of misdemeanor, subject to fine of up to $1,000) [N.Y. Ins. Law § 6409](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (penalty equal to the greater of $1,000 or five times the amount of the unlawful rebate or commission); [N.C. Gen. Stat. § 58-27-5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000037&cite=NCSTS58-27-5&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (guilty of misdemeanor, subject to fine of not more than $5,000); [Va. Code Ann. § 38.2-4614](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000040&cite=VASTS38.2-4614&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (misdemeanor and subject to fine of up to $1,000). |
| [9](#co_fnRef_I7ddb5c72d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.310](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.310&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.H. Rev. Stat. Ann. § 417:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000864&cite=NHSTS417%3a4&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-34&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.M. Stat. Ann. § 59A-16-17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS59A-16-17&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. § 3953.26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.26&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [31 Pa. Code § 125.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=31PAADCS125.1&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [S.C. Code Ann. § 38-75-1000](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS38-75-1000&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer may not pay a commission of more than 60% on a title insurance policy); S.C. Ins. Dept. Reg. 69-18 § 2; [S.D. Codified Laws Ann. § 58-25-13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS58-25-13&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tex. Ins. Code Ann. § 2502.053](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2502.053&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I7ddb5c73d6ee11ea8f41e1f6f2aa78) | [Alaska Stat. § 21.66.350](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000003&cite=AKSTS21.66.350&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ariz. Rev. Stat. Ann. § 20-1590](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS20-1590&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cal. Ins. Code § 12412](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12412&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Conn. Gen. Stat. § 38a-415](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-415&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 626.9541](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.9541&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Haw. Rev. Stat. § 431:20-119](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000522&cite=HISTS431%3a20-119&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-202](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-202&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [N.J. Rev. Stat. § 17:46B-38](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST17%3a46B-38&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ohio Rev. Code Ann. §§ 3953.26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.26&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [3953.27](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.27&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 40 Pa. Cons. Stat. § 910-39.2; [Tex. Ins. Code Ann. § 2502.054](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2502.054&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyo. Stat. § 26-23-323](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000377&cite=WYSTS26-23-323&originatingDoc=If4f539556fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
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2 Title Ins. Law § 18:44 (2020 ed.)

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**Chapter 18. State Regulation of Title Insurance**

§ 18:44. Bar-related title insurance regulation

Sections [2:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a6&originatingDoc=If4f539586fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [2:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a8&originatingDoc=If4f539586fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discuss bar-related title insuring organizations. Today, bar-related title insuring organizations operate in the same manner as do commercial title insurance companies.[1](#co_footnote_I7de28862d6ee11ea8f41e1f6f2a) They are under the supervision of the same state regulatory agencies as are commercial title insurers. Most bar-related title insurance organizations operate in the corporate form pursuant to the same statutory requirements that apply to commercial title insurers. Their source of capital is the sale of shares of stock to the state bar association and to attorneys who wish to become members of the organization.[2](#co_footnote_I7de2af70d6ee11ea8f41e1f6f2a) Ownership of the stock of these corporations is generally limited to the state bar association and attorney members, although licensed abstractors have been permitted to be shareholders.[3](#co_footnote_I7de2af71d6ee11ea8f41e1f6f2a) The companies are managed by a board of directors who are practicing attorneys elected by the member shareholders.[4](#co_footnote_I7de2af72d6ee11ea8f41e1f6f2a)

In most states separate laws and regulations do not exist for bar-related title insurers; instead, those applicable to other title insurance corporations also apply to bar-related title insurers. In Texas, however, additional statutes applicable to bar-related title insurers have been passed.[5](#co_footnote_I7de2af73d6ee11ea8f41e1f6f2a)

Bar-related title insuring organizations have objected that they should not be subject to legislation or regulations pertaining to title insurance companies. They contend that neither the legislative branch nor the executive branch of government has authority to regulate the professional services and fees of lawyers. Lawyers generally are regulated by the judicial branch of government, since they are judicial officers.[6](#co_footnote_I7de2af74d6ee11ea8f41e1f6f2a) Advocates of bar-related title insurance particularly object to having applied to bar-related organizations the high capitalization requirements that states impose on title insurance underwriters.[7](#co_footnote_I7de2af75d6ee11ea8f41e1f6f2a) They protest that such requirements both (a) unlawfully regulate lawyers’ professional services and fees for examining title and (b) prohibit attorneys in states with small populations and few lawyers from being able to offer their clients the service of bar-related title insurance.

State regulatory bodies, however, maintain that if a lawyer chooses to sell insurance of any type, the lawyer must come under the control of the state agency that regulates other insurers.[8](#co_footnote_I7de2af76d6ee11ea8f41e1f6f2a) Reportedly, state bar associations have had at least some success in persuading legislators to regulate only the issuance of title insurance policies, and not the [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or examination or the rates charged for those services.[9](#co_footnote_I7de3e7f0d6ee11ea8f41e1f6f2a)

See also [§ 2:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a8&originatingDoc=If4f539586fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussing conflicts of interest which arise when an attorney who is a member of a bar fund orders a title policy for a client the attorney is representing in the real estate transaction being insured.

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| **Footnotes** | |
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| [2](#co_fnRef_I7de2af70d6ee11ea8f41e1f6f2aa78) | *See* Bohan, Bar Funds’ and Their Attorney Members, in ABA Real Prop. Prob. & Tr. L. Sec., Attorney’s Role in Title Insurance, F2-3 (1990). |
| [3](#co_fnRef_I7de2af71d6ee11ea8f41e1f6f2aa78) | ABA Standing Committee on Lawyers’ Title Guaranty Funds, How-to-do-it: Bar-Related Title Assuring Organizations, 6 to 7 (1976). |
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2 Title Ins. Law Ch. 19 Refs. (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

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| West’s Key Number Digest   1. West’s Key Number Digest, [Insurance](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217/View.html?docGuid=If4f5395b6fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))​[1013](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217k1013/View.html?docGuid=If4f5395b6fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))  1. West’s Key Number Digest, [Insurance](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217/View.html?docGuid=If4f5395b6fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))​[2610](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217k2610/View.html?docGuid=If4f5395b6fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))  1. West’s Key Number Digest, [Insurance](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217/View.html?docGuid=If4f5395b6fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))​[2630](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217k2630/View.html?docGuid=If4f5395b6fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |

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2 Title Ins. Law § 19:1 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:1. Securitized or structured transactions[1](#co_footnote_I7dee4831d6ee11ea8f41e1f6f2a)

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In a “securitized” or “structured” real estate transaction, the source of the financing is the securities market instead of traditional markets.[2](#co_footnote_I7dee6f44d6ee11ea8f41e1f6f2a) Therefore, a real estate transaction that is to be financed through the securities market must be “structured” to meet the specific needs of capital markets. Hereinafter, these transactions will be referred to as “securitized transactions.” The use of securitized transactions grew in the 1990s when, after 30 years’ experience with a [**secondary market**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3a51ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for residential mortgages, a secondary market developed for [**commercial mortgage-backed securities**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a10bcef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).[3](#co_footnote_I7dee6f45d6ee11ea8f41e1f6f2a)

Securitized financings do not compete with traditional financings across the board. In 1996, Jun Han, Vice President of CIGNA Investment Management, identified three market segments where securitized transactions have been successful.[4](#co_footnote_I7dee6f46d6ee11ea8f41e1f6f2a) The segments are (1) commercial mortgage portfolio refinancings, (2) jumbo property financings, and (3) commercial conduits for pooling mortgages on small and low-quality properties. These market niches reflect the spread of capital market financings at the time Han wrote his article. As he noted, however, the markets were developing and expanding rapidly. As borrowers and Wall Street become more accustomed to commercial real estate debt markets, and as uniform ratable mortgage documents become available, securitized financing may reach into other segments of the real estate financing market where conventional financing now is the norm.

The timing of the closing for a securitized transaction can differ from the timing of more conventional real estate transactions. If a securities issue is involved in a transaction, the closing must take place at the time the [**SEC**](http://practicallawconnect.thomsonreuters.com/Document/I03f4da84eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [**disclosure statements**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9b4ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) designate. A delay can trigger a requirement to amend the disclosures.

Multiproperty securitized transactions fit into two general categories. “Portfolio” transactions involve one borrower and multiple properties. “Conduit” transactions involve multiple borrowers, each with one or more properties in the pool.

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| **Footnotes** | |
| [1](#co_fnRef_I7dee4831d6ee11ea8f41e1f6f2aa78) | Sections [19:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a1&originatingDoc=If4f5395e6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) through [19:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a31&originatingDoc=If4f5395e6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and Appendices [19A](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19A&originatingDoc=If4f5395e6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) through [19H](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19H&originatingDoc=If4f5395e6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) were contributed by Robert S. Bozarth, Vice President and Major Transactions Counsel, Fidelity National Title Insurance Company. *See* biographies of contributing authors at *vii*. |
| [2](#co_fnRef_I7dee6f44d6ee11ea8f41e1f6f2aa78) | *See generally* Forte, A Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob. & Tr. L. J. 489, 491 n. 2 (Fall 1996).  Briefly stated, the process of mortgage securitization involves the creation of a new financial instrument that represents an ownership interest in, or an obligation secured by, a pool of mortgage loans. Acquisition of these instruments can be structured either as a sale, with the issuer selling certificates that represent an undivided fractional ownership interest in the issuer’s mortgage pool, or as financing, with the issuer issuing debt instruments secured by the issuer’s mortgage pool as collateral. |
| [3](#co_fnRef_I7dee6f45d6ee11ea8f41e1f6f2aa78) | Forte, A Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob. & Tr. L. J. 489, 495 n. 13 & 14 (Fall 1996). |
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2 Title Ins. Law § 19:2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:2. Securitized or structured transactions—Commercial mortgage portfolio refinancings

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f539616fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

“Securitized transaction” structures began their evolution near the close of the 1980s in commercial mortgage portfolio refinancings involving loans of hundreds of millions of dollars.[1](#co_footnote_I7df54d11d6ee11ea8f41e1f6f2a) To be marketable, securitized transaction structures must be ratable by a reputable rating agency. The capital markets place a premium on the reliability of [**cash flow**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d7a4eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). Therefore, to be ratable, securitized transaction structures must be designed to maximize cash flow reliability. Three elements are said to be essential:

1. 1. The structure must not permit any interruption of the cash flow from the property to the ultimate investor.
2. 2. All information regarding the borrower, the property, and the mortgage must be disclosed to the investors; and
3. 3. The structure must not allow for (or must compensate for) the repayment of any principal before its scheduled repayment, whether in installments or at maturity.[2](#co_footnote_I7df57420d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7df54d11d6ee11ea8f41e1f6f2aa78) | One of the first fully developed portfolio refinancings, the “Macy Ten Store Refinancing” of 1988, is described below to illustrate the construction of a “securitized transaction” and the title insurance coverages designed to insure the features built into that structure. Macy’s Ten Store Refinancing:  In the summer of 1986, R.H. Macy & Co. was the subject of a $4.5 billion leveraged buyout. In 1988, Macy sought some refinancing of its buyout debt, plus financing for acquisitions of some new store sites. This was a $180 million refinancing, so Macy sought funding with 90-day commercial paper notes. The credit rating agencies required Macy to place the title to 10 of its stores into special purpose entities (SPEs) to mortgage their properties. The issuer of the 90-day commercial paper notes, Macy Capital Corporation, was also structured as a bankruptcy remote SPE.  Macy Capital was to issue the notes. Citicorp Real Estate Investment Corp. was the trustee for the note holders. The commercial paper notes were secured by a letter of credit issued by Citibank. The letter of credit assured the note holders that the notes would be paid on time and relieved them of the concerns they would have if they had to rely on mortgages to secure the repayment of their notes at the end of the period.  Citibank also acted as the swap provider for an interest rate swap purchased by Macy to stabilize its interest expense. Macy agreed to make payments to Citibank when the notes were due in an amount equal to an agreed fixed rate. Citibank, in turn, would pay Macy’s a variable rate that approximated the market for the 90-day commercial paper notes.  Citibank accepted mortgages from each of the 10 property-owning SPEs to secure the reimbursement agreement for the letter of credit and Macy’s swap obligations. Each mortgage secured a guarantee from the SPE of the letter of credit reimbursement agreement and the swap agreement. These were “upstream guarantees” so they created a potential fraudulent conveyance.  [​Image 1 within document in PDF format.](http://practicallawconnect.thomsonreuters.com/Link/Document/Blob/If9caf030883e11deb6e29bd88b461c4b.pdf?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.DocLink))  The transaction for the first tier of financing is diagrammed above. The mortgage security portion occupies the lower left portion of the diagram. The letter of credit and interest rate swap transactions between Macy’s and Citibank are on top left. The securities transaction is on the right.  Citibank ordered loan title insurance policies on each of the 10 properties from Lawyers Title Insurance Corporation. It required the following transactional coverages for this financing.   1. (1) Aggregation and first loss coverages. To the extent they could, Lawyers Title aggregated the coverage. The four properties in the Atlanta Division and two in the New Jersey Division (Marley Station Mall and Owings Mills Mall, both in Maryland) were easy to aggregate. Livingston in New Jersey was more difficult because New Jersey had not approved (or disapproved) the aggregation (then “tie-in”) endorsement, but Lawyers Title could issue it as a “one shot” deal. The New York properties could not be aggregated out of state in 1988, so they formed a separate cluster of properties, joined by notations on the face page of the policies. If this transaction were to be done in 1998, the New York policies could aggregate with the rest, but the New Jersey policies would not. Each of the polices with aggregation endorsements also included a first loss endorsement as well. 2. (2) Letter of credit endorsements. Lawyers Title Insurance Corporation issued letter of credit endorsements for guarantee obligations in Georgia, Maryland, and New Jersey. Similar coverage was included in Schedule B of the New York policies. 3. (3) Rate swap endorsements. The interest rate swap obligations were structured as additional interest obligations to avoid the heavy mortgage tax in New York. If the mortgages were increased by the customary 10% for the rate swap breakage just for a contingent obligation, the cost would have been heavy. Instead the breakage was defined as an element of additional interest, which did not require an increase in the face amount of the mortgage. |
| [2](#co_fnRef_I7df57420d6ee11ea8f41e1f6f2aa78) | Forte, A Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob & Tr. L.J. 501–502 (Fall 1996). |

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2 Title Ins. Law § 19:3 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:3. Securitized or structured transactions—Credit enhancements

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f539646fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

In structuring securitized real estate transactions, various credit enhancement techniques are utilized in order to increase the [**cash flow**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d7a4eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) reliability that is necessary to win the approval of rating agencies. While corporate attorneys experienced in asset-based financing usually confine the term “credit enhancement” to a limited set of tools,[1](#co_footnote_I7dfaf261d6ee11ea8f41e1f6f2a) from a real estate lawyer’s point of view, all the special features discussed in §§ [19:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a4&originatingDoc=If4f539646fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a11&originatingDoc=If4f539646fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) below are used to raise the borrower’s credit rating and may be viewed as “credit enhancements.”

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| **Footnotes** | |
| [1](#co_fnRef_I7dfaf261d6ee11ea8f41e1f6f2aa78) | *See generally* Committee on Bankruptcy and Corporate Reorganization of the New York Bar Association, [Structured Financing Techniques, 50 Business Lawyer 527, 549 (Feb. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0105251976&pubNum=0001105&originatingDoc=If4f539646fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_1105_549&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1105_549), describing asset based financing on nonreal estate assets and distinguishing between “external” credit enhancements (e.g., letters of credit, surety bonds, guarantees and subordinated loans from third parties) and “internal credit enhancements” (e.g., capital contributions and “senior-subordinated” debt structure).  In A Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob. & Tr. L.J. 489, 492, N. 5 (Fall 1996), author Joseph Philip Forte recognizes four major categories of credit support: (i) a third-party credit enhancer issuing a standby letter of credit, a surety bond, a pool insurance policy, or corporate guarantee of a third-party credit enhancer; (ii) overcollateralization; (iii) creating senior and subordinated classes of securities; and (iv) establishing reserves or cash collateral accounts. |

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2 Title Ins. Law § 19:4 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:4. Securitized or structured transactions—Credit enhancements—Special purpose entities

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

In most securitized real estate transactions, a separate [**bankruptcy remote**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a1109ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [**special purpose entity (SPE)**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d6deeee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))[1](#co_footnote_I7e01d031d6ee11ea8f41e1f6f2a) is created to hold title to the mortgaged property and another is created to issue the securities. SPEs are designed to perform only one function each. For this reason, an SPE created to hold title to the property securing the debt will not be the operator of businesses conducted on the property. Credit rating institutions generally require this use of SPEs to insulate the mortgagor and the issuer from risk. SPEs also may be used to create tiers of ownership to make redundant barriers to liability.[2](#co_footnote_I7e01d032d6ee11ea8f41e1f6f2a)

Title insurers will focus their attention on the SPEs created to hold title to the real property, since they will be asked to insure both the owner’s fee simple title and the mortgage lien on that property. The credit rating institutions require that the borrower place the title to each property into an SPE to minimize the risk that the mortgagor will file for bankruptcy or have a subordinate creditor file a petition for bankruptcy on the mortgagor’s behalf. The mortgagor usually is prohibited from “borrowing” any subordinate debt.

The borrowers usually hold the title to the properties that will secure the debt in a securitized transaction in another entity before the SPE is created and title is transferred to it. To avoid the cost of a new owner’s [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), they frequently ask the title insurer to assign the benefit of the transferor’s title insurance policy to the SPE. Even if that policy is several years old, title insurers often are willing to assign the transferor’s policy, since the SPE has the same ownership as its transferor. However, the assigned title policy will not insure that *the SPE* holds title to the real property, or that the property is encumbered by only the new mortgage. The absence of these coverages can be a problem if the securitized transaction is a bond lease or an acquisition by a [**real estate investment trust**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d859eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). On the other hand, the owner’s policy being merely assigned is not so critical when a loan is involved, since a new loan policy will give the lender those coverages.

In loan transactions, the SPE that holds title to the land is usually not the “borrower.” It, instead, is often the guarantor of its parent’s note. When the SPE guarantees its parent’s note and secures the guarantee with a mortgage on the property, the transaction creates a potential [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).[3](#co_footnote_I7e01f740d6ee11ea8f41e1f6f2a) The SPE does not receive the proceeds of the loan, so it has transferred its property without receiving adequate consideration in return. A title insurer, therefore, may insist on issuing a title insurance policy with a creditors’ rights exclusion to bar coverage of a potential fraudulent conveyance claim.[4](#co_footnote_I7e01f742d6ee11ea8f41e1f6f2a)

The credit rating institutions also want evidence that each title-holding SPE is truly isolated and not subject to any inadvertent liabilities unconnected to the loan that could increase the titleholder’s vulnerability. Several endorsements are used for this purpose. First, to assure that there are (i) no rights of reverter granted in restrictions in the title to the land, (ii) no rights in others to a subsurface mineral estate, and (iii) no encroachments onto the insured land or improvements encroaching onto adjacent land, an [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 9REM Endorsement usually will be required.[5](#co_footnote_I7e01f744d6ee11ea8f41e1f6f2a)

Additionally, credit rating institutions frequently require evidence that the property is assessed as a single tax lot. Title insurers can issue a Single Tax Lot endorsement[6](#co_footnote_I7e021e53d6ee11ea8f41e1f6f2a) in most jurisdictions to meet this requirement. If the development is built on a discrete parcel of land, the endorsement may be a simple statement that the land is assessed as a single lot. Alternatively, if the insured land is within a larger development, this endorsement can also include protection against the loss of rights over adjacent lands.

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| **Footnotes** | |
| [1](#co_fnRef_I7e01d031d6ee11ea8f41e1f6f2aa78) | They also are referred to as “special purpose vehicles” or SPVs. *See* Committee on Bankruptcy and Corporate Reorganization of the New York Bar Association, [Structured Financing Techniques, 50 Business Lawyer 527, 553 (Feb. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0105251976&pubNum=0001105&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_1105_553&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1105_553). |
| [2](#co_fnRef_I7e01d032d6ee11ea8f41e1f6f2aa78) | Also in certain cases, an SPE is required of a principal, general partner, or managing member of the borrower. Forte, A Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob. & Tr. L.J. N. 32 (Fall 1996). |
| [3](#co_fnRef_I7e01f740d6ee11ea8f41e1f6f2aa78) | *See* [§ 6:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a34&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), examining fraudulent conveyance issues and the applicability of title insurance policies’ exclusions for creditors’ rights laws. |
| [4](#co_fnRef_I7e01f742d6ee11ea8f41e1f6f2aa78) | Forte, A Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob. & Tr. L.J. N. 32 (Fall 1996). *See* [§ 6:38](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a38&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), considering title insurance policies’ standard creditors’ rights exclusion and the risk of creditors’ claims presented by conveyances to and mortgages from special purpose entities. |
| [5](#co_fnRef_I7e01f744d6ee11ea8f41e1f6f2aa78) | Discussed at §§ [9:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a3&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [9:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a6&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP9&originatingDoc=If4f560426fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I7e021e53d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, ALTA Endorsement 18-06 Single Tax Parcel *infra* at Appendix AA-18. |

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2 Title Ins. Law § 19:5 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:5. Securitized or structured transactions—Credit enhancements—Letters of credit, surety bonds, and guarantees

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Another form of credit enhancement used in single borrower loans is to secure repayment of bonds or [**commercial paper**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9c4ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) notes with a third party’s [**standby letter of credit**](http://practicallawconnect.thomsonreuters.com/Document/I3f4a4704e8db11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), surety bond, or guarantee issued to a trustee for the bondholders. This approach improves the securitization’s rating because it eliminates both the cumbersome foreclosure process and the risk to the bond or note holders from property value fluctuations.

The capital markets view letters of credit or surety bonds as credit enhancements because the bond or note holders are secured by the assets of the [**issuing bank**](http://practicallawconnect.thomsonreuters.com/Document/I2104dd99ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or surety instead of by the disputable value of the borrower’s real property. The letter of credit issuer or surety will secure the borrower’s reimbursement obligation with mortgages on the property. If the borrower defaults on the bonds, the trustee draws on the letter of credit to pay the bondholders and the letter of credit issuer or the surety will be the one to seek reimbursement from the borrower or its real property security.

Title insurance policies insuring the mortgage liens that secure reimbursement of a standby letter of credit or surety bond are issued to the letter of credit issuer or surety. Because draws on the standby letter of credit or surety bond will be made, if at all, upon a default on the borrower’s bond obligations, funding under the letters of credit or surety bond will always be future advances of principal indebtedness. Title insurance policies are not designed to insure future advances without modification. The essence of the coverage of a loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is the insurance of the validity, enforceability, and priority of the insured mortgage lien. However, a preprinted condition in the policy excludes coverage of the *validity* and *enforceability* of the lien of the insured mortgage as to any future advances:

(d) The Company shall not be liable for (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements….[1](#co_footnote_I7e0a34a0d6ee11ea8f41e1f6f2a)

The [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Loan Policy also excludes insurance coverage of the priority of future advances in paragraph 3(d) of the Exclusions from Coverage:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses that arise by reason of:

… 3. Defects, liens, encumbrances, adverse claims or other matters:

… (d) attaching or created subsequent to Date of Policy….[2](#co_footnote_I7e0a34a2d6ee11ea8f41e1f6f2a)

These future advance issues arise with any mortgage securing a loan that permits future advances or includes a revolving credit line. To obtain coverage for the enforceability, validity, and priority of the mortgage lien as to funds advanced after the policy date, the insured must purchase an endorsement. The American Land Title Association first adopted standard endorsement forms for loans that involve future advances or revolving credit in 2003. These are discussed in [§ 9:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a20&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and copies are reproduced in [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLsAA&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLsAA&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14.2&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at this end of this treatise. In addition, at the end of this chapter, Appendices [19A](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19A&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [19B](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19B&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [19C](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19C&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [19E](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19E&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) provide language from endorsements covering future advances and revolving credit that Lawyers Title Insurance Corporation had issued earlier. Sections [5:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a10&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [14:23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14%3a23&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [14:24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14%3a24&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) consider endorsements that extend the title insurance policy’s coverage to future advances in the context of construction loans and workouts of debt.

An endorsement providing coverage for a mortgage securing the reimbursement obligation under standby letters of credit or surety bonds actually should have fewer exceptions than the endorsements providing coverage for most other forms of future advances mortgages. This is because under other mortgages, there may be an issue as to whether a future advance was “obligatory” or “optional” to the lender. If the advance is “obligatory,” courts usually accord the advance the same priority as loan proceeds disbursed at the closing of the mortgage. If the advance is “optional,” courts will allow defenses against the mortgage holder’s claim of priority. Consequently, endorsements insuring “optional” advances normally contain exceptions not necessary in letter of credit endorsements.

The distinction between “obligatory” advances and “optional” advances often is clouded by a state’s statutory or case law definition of “obligatory.” Additionally, in those states that have attempted to define “obligatory” and “optional,” the efforts are always inconsistent with the more stringent standards (i) established by the definition of “obligatory disbursement agreement” in the [**Internal Revenue Code**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3ae4ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for the priority of federal tax liens[3](#co_footnote_I7e0be251d6ee11ea8f41e1f6f2a) and (ii) applied by the bankruptcy courts.[4](#co_footnote_I7e0be252d6ee11ea8f41e1f6f2a) While many states recognize an advance from the lender directly to the borrower as “obligatory,” the federal tax lien and bankruptcy laws both *require the advance to be made to a third party* who is relying on the credit of the issuing bank or surety as security for repayment of the obligation. A letter of credit issuer or surety’s making an advance to the trustee for the bondholders would satisfy even this stricter standard of tax and bankruptcy laws. Therefore, if the securitized transaction includes credit enhancement by a *letter of credit issued at the closing,* title insurers usually are willing to issue a “letter of credit” future advance endorsement. This endorsement modifies the loan policy to insure the validity, enforceability, and priority of any draws made under the letter of credit or surety bond, and is not encumbered with the exceptions necessary in an endorsement designed to insure “optional advances of indebtedness.” A copy of such an endorsement is attached at the end of this section at [Appendix 19A](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19A&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). A typical optional advance endorsement used for insuring mortgages securing repayment of [**revolving credit loans**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d929eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is attached at [Appendix 19B](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19B&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) for purposes of comparison.[5](#co_footnote_I7e0be255d6ee11ea8f41e1f6f2a)

If the letter of credit or a series of letters of credit will be issued *after the closing,* the endorsement that a title insurer will issue will have a mixture of the features of the two preceding endorsements. This is because the bank/letter of credit issuer could escape its “obligation” to issue the letter of credit until the letter of credit actually is issued to the trustee for the bondholders. The borrower must meet specified tests before the bank will issue the letter of credit. Consequently, the endorsement will have the features of an optional advance endorsement for the interval between the closing and the time the letter of credit is issued. Once the letter of credit is issued, the endorsement protects the priority of payments drawn on the letter of credit as if they were advanced on the date the letter of credit was issued. A copy of this form of endorsement is reproduced as [Appendix 19C](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19C&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

As discussed in [§ 19:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a4&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), most [**securitization**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) transactions require title to the land to be placed in a [**bankruptcy remote**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a1109ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [**SPE**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d6deeee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). The SPE is not the borrower, so it executes a guaranty of the obligation to repay the indebtedness and secures the guaranty with the insured mortgage or [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). In the case of one of these guaranties, a title insurance loan policy can insure the lien of a mortgage as security for repayment of obligations incurred in satisfying the guaranty obligation. A copy of an endorsement that title insurers have used in cases involving a simple guaranty of a loan is reproduced at [Appendix 19D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19D&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). A variation that has been used when the loan involves future advances is at [Appendix 19E](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19E&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

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| **Footnotes** | |
| [1](#co_fnRef_I7e0a34a0d6ee11ea8f41e1f6f2aa78) | ALTA Loan Policy (Oct. 17, 1992), Conditions & Stipulations ¶ 8(d), reproduced at [Appendix C1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPC1&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The same provision can be found in 1987 and 1990 ALTA Loan Policy forms and a comparable provision appears in ¶ 8(b) of the ALTA Loan Policy 1970 (10/17/70) and ALTA Loan Policy 1970 (revised 10/17/70 and 10/17/84). *See* Appendices. |
| [2](#co_fnRef_I7e0a34a2d6ee11ea8f41e1f6f2aa78) | ALTA Loan Policy (Oct. 17, 1992), Exclusions From Coverage ¶ 3(d), reproduced at [Appendix C1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPC1&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Appendix C2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPC2&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The same provision appears in 1987 and 1990 ALTA loan policy forms. Paragraph 3(d) of the ALTA Loan Policy 1970 (10/17/70) and ALTA Loan Policy 1970 (revised 10/17/70 and 10/17/84) differs only slightly in wording. |
| [3](#co_fnRef_I7e0be251d6ee11ea8f41e1f6f2aa78) | [26 U.S.C.A. § 6323(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS6323&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). If advances do not meet the standard for a “Commercial Transactions Financing Agreement,” a “Real Property Construction or Improvement Financing Agreement” (neither of which apply here) or the “Obligatory Disbursement Agreement” under this section, they are considered optional. Under [26 U.S.C.A. § 6323](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS6323&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))[d] optional advances are given a 45-day grace period after a federal tax lien is filed, then any optional advance made after the grace period is subordinate to the tax lien. |
| [4](#co_fnRef_I7e0be252d6ee11ea8f41e1f6f2aa78) | It is well established that a letter of credit and the proceeds therefrom are not the property of the debtor’s estate under [11 U.S.C.A. § 541](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=11USCAS541&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). When the issuer honors a proper draft under a letter of credit, it does so from its own assets and not from the assets of its customer who caused the letter of credit to be issued. As a result, a bankruptcy trustee is not entitled to enjoin a post petition payment of funds under a letter of credit from the issuer to the beneficiary because such a payment is not a transfer of debtor’s property (a threshold requirement under [11 U.S.C.A. § 547(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=11USCAS547&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))).  [Matter of Compton Corp., 831 F.2d 586, 16 Bankr. Ct. Dec. (CRR) 1265, 17 Collier Bankr. Cas. 2d (MB) 987, Bankr. L. Rep. (CCH) P 72107 (5th Cir. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987132427&pubNum=0000951&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), on reh’g, [835 F.2d 584, 18 Collier Bankr. Cas. 2d (MB) 273 (5th Cir. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987159021&pubNum=0000350&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Willis v. Celotex Corp., 978 F.2d 146, 23 Bankr. Ct. Dec. (CRR) 1032, Bankr. L. Rep. (CCH) P 74938, 23 Fed. R. Serv. 3d 1067 (4th Cir. 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992183630&pubNum=0000951&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7e0be255d6ee11ea8f41e1f6f2aa78) | Also, American Land Title Association endorsements adopted in October 2003 to cover future advances and letters of credit are discussed in [§ 9:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a20&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at Appendices [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP14&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) through [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP14.2&originatingDoc=If4f560456fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of this book. |

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2 Title Ins. Law § 19:6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:6. Securitized or structured transactions—Credit enhancements—Overcollateralization

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560486fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

A loan can be overcollateralized in two ways. First, the [**credit rating agency**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9c1ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) may require overcollateralization by imposing a lower loan-to-value ratio. A loan of 60% of the value of the collateral that secures it is safer than a loan of 100% of the value of the collateral. If the borrower has more unencumbered property than is necessary to secure the loan, the rating agency may require that it encumber all of it to raise the credit rating. This works with portfolios and with mega-transactions secured by single properties.

Second, if the loan is to a single borrower with multiple properties, the loan may be “cross-collateralized” or “cross-defaulted,” even if the mortgagors are SPEs. These terms can be confusing. A blanket (single) loan secured by mortgages on several properties cannot be “cross-collateralized” or “cross-defaulted” because all properties are collateral for the one note, and a default under that note permits the lender to accelerate and foreclose on each of the properties (possibly subject to a requirement to marshal its collateral for the benefit of junior creditors). Blanket loans allow title insurers to “aggregate” the title insurance coverage to permit the lender to shift the coverage among the properties. In simple overcollateralizations involving multiple properties, aggregation can save the borrower title insurance premium costs. Aggregation endorsements are discussed at [§ 9:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a19&originatingDoc=If4f560486fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and a copy of the American Land Title Association’s standard Aggregation Endorsement is reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f560486fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP12&originatingDoc=If4f560486fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to this treatise.

However, aggregation is not possible where each property is encumbered with a mortgage that secures an individual note, which is cross-collateralized and cross-defaulted with other notes secured by their own mortgages on other properties. For example, in Pennsylvania, a multiproperty loan usually is secured by a first mortgage that secures the note given by the [**SPE**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d6deeee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) in an allocated amount for that property, together with a second mortgage that secures an amount equal to the total loan facility less the amount of the first mortgage. The second mortgage is cross-collateralized and cross-defaulted with all the first mortgages on the other properties. If the lender requires a first mortgage in the amount of the loan-to-value ratio, 60% for example, and agrees to a second securing the difference between the first and the residual value of the property, the most it can recover in a foreclosure is the face amount of the mortgages at the closing (100% of the value of the property at closing). If the property increases in value, this lender cannot reach any of the increase in value, but a lender with a blanket mortgage could.

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2 Title Ins. Law § 19:7 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:7. Securitized or structured transactions—Credit enhancements—Senior-subordinated debt

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5604b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Some structures create rated senior classes or “tranches” of rated debt and, usually, some unrated classes of debt. The subordinate and unrated classes of debt bear most of the risk of loss in the transaction and, accordingly, they bear a higher interest cost to the borrower. The lowest [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is the most vulnerable to loss and is often referred to as the “first loss” position. It is not uncommon to find four levels of debt in the financing. By placing the debt into these tiers, the investment bankers are able to create an overall facility with an aggregate yield spread that is lower than treasuries. It drives the borrower’s financing costs for a [**securitization**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) below its financing costs for conventional loans in the higher segments of the commercial loan market.[1](#co_footnote_I7e1928c1d6ee11ea8f41e1f6f2a)

The nomenclature in securitized transactions can be confusing. Expect exotic terms like “[**mezzanine financing**](http://practicallawconnect.thomsonreuters.com/Document/I4cf870bbef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))”[2](#co_footnote_I7e1928c2d6ee11ea8f41e1f6f2a) and “first loss piece.”[3](#co_footnote_I7e194fd2d6ee11ea8f41e1f6f2a) An unsecured debt has even been referred to as the “senior subordinated debentures”—a term that appears to be a double oxymoron to a real estate lawyer.

Each tier or [**tranche**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a13aaef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of ratable debt may be secured by its own mortgage. Lender’s counsel must choose whether the separate mortgages on each property can be insured with a single policy or whether each mortgage should be insured by its own policy. The nature of the loan facility, the locality, and the necessity of separate policies for each insured lender (or trustee) will govern the decision.

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| **Footnotes** | |
| [1](#co_fnRef_I7e1928c1d6ee11ea8f41e1f6f2aa78) | Han, To Securitize or Not To Securitize? The Future of Commercial Real Estate Debt Markets, Real Estate Finance, at 75 (Summer 1996). |
| [2](#co_fnRef_I7e1928c2d6ee11ea8f41e1f6f2aa78) | “Mezzanine financing” is the tier between the AAA tranche at the top and the “first loss piece” at the bottom.  *See, e.g.*, American Land Title Association Endorsement 16, Mezzanine Financing (10/22/04) reproduced in Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5604b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP16&originatingDoc=If4f5604b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this treatise. |
| [3](#co_fnRef_I7e194fd2d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, American Land Title Association Endorsement 20, First Loss – Multiple Parcel Transactions (4/19/04) reproduced in Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5604b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP20&originatingDoc=If4f5604b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this treatise. |

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2 Title Ins. Law § 19:8 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:8. Securitized or structured transactions—Credit enhancements—Ratable mortgage documents

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5604e6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

The great advantage the residential mortgage sector enjoyed over the commercial sector in funding by [**mortgage-backed securities**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a10ddef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is due, in large part, to the discipline imposed by FNMA (“[**Fannie Mae**](http://practicallawconnect.thomsonreuters.com/Document/I03f4da71eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))”) and FHLMC (“[**Freddie Mac**](http://practicallawconnect.thomsonreuters.com/Document/I03f4da73eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))”) in requiring uniform documents. Fannie Mae and Freddie Mac currently are reviewing and revising their uniform mortgage documents.[1](#co_footnote_I7e1ece10d6ee11ea8f41e1f6f2a)

Uniform ratable mortgage documents can create some difficulties because real estate law is local, not uniform. Some states provide for quick and easy nonjudicial foreclosures, while many others require judicial foreclosures that may take much longer to finish. Idiosyncratic differences may apply in one or two states. For example, lenders do not use blanket mortgages in Pennsylvania because blanket mortgages must be foreclosed seriatim. Some western states have adopted a version of California’s “[**one-action rule**](http://practicallawconnect.thomsonreuters.com/Document/I686e8dd63db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))” that makes a lender elect between suing the borrower on the note or foreclosing on the mortgage. Under these rules, lenders cannot foreclose on the property and then sue the borrower to recover a deficiency. Although most states use a mortgage or [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to secure loans, Oklahoma prohibits deeds of trust; Georgia uses “deeds to secure debt”; and Louisiana requires “collateral mortgages” if the loan involves future advances. Each locality has developed customs to cope with these idiosyncratic differences in their mortgage documents. Developing a uniform mortgage that will also satisfy a title company’s requirements in a particular locality becomes a giant undertaking.

Title insurance can smooth some of the bumps caused by the idiosyncratic development of real property law in each state, but the insurance industry is also regulated by the individual states. As a result, title insurers face a spectrum of regulatory schemes ranging from the rigid promulgation of rates, forms and rules of conduct in Texas to the laissez-faire approach of states like Illinois, Massachusetts, and Virginia where title insurers are not required to file rates or forms.

The most important issues are already covered by the loan policy itself. More than anything else, the lenders want insurance of the validity, enforceability, and priority of the mortgage or deed of trust. The title insurer’s most important role is providing that coverage. This basic loan coverage makes the [**secondary market**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3a51ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for mortgage indebtedness possible. Additional coverages in endorsements are merely icing on the cake. Some endorsement forms desired to smooth over a problem with the required form for a deed of trust or mortgage may not be available in a rigidly controlled state.

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| **Footnotes** | |
| [1](#co_fnRef_I7e1ece10d6ee11ea8f41e1f6f2aa78) | The development of a ratable mortgage form for commercial transactions by the Capital Consortium is described in detail in Forte, Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob. & Tr. L.J. 489 (Fall 1996). |

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2 Title Ins. Law § 19:9 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:9. Securitized or structured transactions—Credit enhancements—Guarantees or insurance by government instrumentalities

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560516fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

On certain kinds of loans, notably some multifamily projects, the debt may be guaranteed by a government instrumentality. The [**secondary markets**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3a51ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) began with the credit support of government instrumentalities like GNMA, FNMA and FHMLC on residential mortgages for one- to four-family dwellings. The marketability of these residential pools was established by the capital market’s faith in the sponsorship of these instrumentalities.[1](#co_footnote_I7e24e891d6ee11ea8f41e1f6f2a) FNMA and FHLMC also lend on multifamily projects. This is a larger issue in pool financing, so the consequences of FNMA and FHLMC requirements for the name of the insured in the title insurance policy’s [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) are discussed at [§ 19:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a16&originatingDoc=If4f560516fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

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| **Footnotes** | |
| [1](#co_fnRef_I7e24e891d6ee11ea8f41e1f6f2aa78) | Forte, [From Main Street to Wall Street: Commercial Mortgage-Backed Securities, 10 Probate and Property, 8, 10 (Jan./Feb. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106551238&pubNum=0100488&originatingDoc=If4f560516fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_100488_10&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_100488_10). |

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2 Title Ins. Law § 19:10 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:10. Securitized or structured transactions—Credit enhancements—Interest rate swaps

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560546fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

[**Interest rate swaps**](http://practicallawconnect.thomsonreuters.com/Document/I2104e148ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or exchanges are a form of derivative transaction used by borrowers to stabilize the effective interest rate. Credit rating agencies may suggest a [**swap**](http://practicallawconnect.thomsonreuters.com/Document/I03f4da79eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) if they are concerned about the effects of volatility in interest rates. In the recent past, this has not been a great concern, so relatively few swaps have been structured into transactions; they were quite common between 1991 and 1993.

Interest rate swaps are used to “fix” a borrower’s interest rate.[1](#co_footnote_I7e2a8de0d6ee11ea8f41e1f6f2a) An interest rate swap may be purchased to stabilize all or just a portion of the risk of fluctuating prices. The borrower must purchase the swap at the outset of the loan. When the swap is in place, the borrower makes payments to the swap provider at a fixed rate based upon a “[**notional amount**](http://practicallawconnect.thomsonreuters.com/Document/I2104df33ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).” The notional amount equals the full amount of the loan if the swap covers 100% of the risk, or a lesser percentage of the loan if the swap covers only that percentage. The swap provider pays the borrower at the variable rate (or an approximation of the variable rate) set in the borrower’s variable rate financing. The net effect is to fix the borrower’s interest expense at the rate it pays the swap provider.

The swap provider gets another swap to hedge the risk of the swap it sells to the borrower. If the borrower defaults on its obligations in its swap, it must pay damages to the swap provider in the amount the provider needs to purchase another swap to cover its counterbalancing “hedge.” To secure the damages due from the borrower in the event of “breakage,” swap providers ask the borrower for a mortgage and title insurance. A title policy that insures the lien of a mortgage as security for the borrower’s obligations in a rate swap will need an endorsement for that purpose. A simple interest rate swap endorsement is reproduced at [Appendix 19F](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19F&originatingDoc=If4f560546fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). In states that impose a mortgage tax upon recording a mortgage or [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), more elaborate endorsements may be used in conjunction with documents that define the breakage as “additional interest.”

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| **Footnotes** | |
| [1](#co_fnRef_I7e2a8de0d6ee11ea8f41e1f6f2aa78) | Interest rate swaps fix a borrower’s interest rate in the same way a jet fuels futures contract stabilizes an airline’s fuel expenses. |

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2 Title Ins. Law § 19:11 (2020 ed.)

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§ 19:11. Securitized or structured transactions—Credit enhancements—Other credit enhancement tools

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560576fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

In some cases, the [**credit rating agency**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9c1ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) may require the borrower to establish reserves or [**cash collateral**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e949ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) accounts to support the timely payment of its obligations. Although they are certainly significant to the borrower, these generally have no title insurance implications.

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§ 19:12. Securitized or structured transactions—Commercial mortgage pools—Risk management in mortgage pools

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5605a6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Some real estate transactions are designed to meet the capital market’s requirements for [**mortgage-backed securities**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a10ddef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) invested in a pool of mortgages. To make the pool marketable, the transaction documentation must meet the criteria of the [**credit rating agency**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9c1ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that sets the credit rating for the pool.[1](#co_footnote_I7e3897a1d6ee11ea8f41e1f6f2a)

One of the primary tools of risk management that credit rating agencies require in mortgage pools is diversification of risk. The risk of loss is reduced by avoiding concentration, e.g., having in the pool any loan or group of loans to a single borrower that exceeds 5% of the total pool. Commercial real estate mortgage pools strive to avoid geographic and industry concentrations as well. Many of the credit enhancement tools described in §§ [19:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a3&originatingDoc=If4f5605a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a11&originatingDoc=If4f5605a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) also have a role in pools. Guarantees, the use of ratable documents, and insurance by governmental instrumentalities are often used in mortgage pool [**securitizations**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

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| **Footnotes** | |
| [1](#co_fnRef_I7e3897a1d6ee11ea8f41e1f6f2aa78) | *See* Legal and Structured Financing Issues in Commercial Mortgage Securities, Structured Finance Rating Real Estate Finance (1996 Standard and Poor’s. New York, N.Y.). |

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§ 19:13. Securitized or structured transactions—Commercial mortgage pools—Comparison to residential mortgage pools

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5605d6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Pools of residential mortgages have been commonplace for 30 years, but the title insurance underwriting implications of many of these pools are minor. For pools of residential mortgages (and some pools of commercial mortgages), the only involvement of the title insurer is to issue the loan policy to the loan originator at or following the closing of each individual loan. The loan originators will insist that the title insurance policies meet the standards required for the pool.[1](#co_footnote_I7e42f7e1d6ee11ea8f41e1f6f2a) Loans initiated by a number of loan originators then are pooled together and ultimately funded by [**mortgage-backed securities**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a10ddef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). Title insurers have no participation in the pooling process after issuing the loan policy. Title insurers view these transactions as simple, conventional loans. The most significant innovation of the residential pools has been the development of uniform mortgage, note, and guarantee forms by FNMA and FHLMC. These uniform instruments are necessary for packaging pools of loans for resale on the secondary mortgage market. The FNMA/FHLMC uniform instruments were used as a model for the Capital Markets Mortgage that is used today for commercial mortgage pools.[2](#co_footnote_I7e42f7e2d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7e42f7e1d6ee11ea8f41e1f6f2aa78) | Forte, [From Main Street to Wall Street: Commercial Mortgage-Backed Securities, 10 Probate and Property, 8, 13 (Jan./Feb. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106551238&pubNum=0100488&originatingDoc=If4f5605d6fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_100488_13&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_100488_13). |
| [2](#co_fnRef_I7e42f7e2d6ee11ea8f41e1f6f2aa78) | Forte, Capital Markets Mortgage: A Ratable Model for Main Street and Wall Street, 31 Real Prop. Prob & Tr. L.J. 489, 498 (Fall 1996). |

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§ 19:14. Securitized or structured transactions—Commercial mortgage pools—Real estate investment trusts

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560606fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Real estate investment trusts (REITs) can be organized to hold pools of mortgages. A [**REIT**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d859eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) can be organized as either a corporation, trust, or association that meets the requirements set forth in [26 U.S.C.A. § 856](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS856&originatingDoc=If4f560606fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). At least 75% of its gross income must be derived from sources including (i) rents from real property, (ii) interest on obligations secured by mortgages on real property, (iii) gains from the sales of real property, and (iv) dividends or distributions from other REITS.[1](#co_footnote_I7e489d31d6ee11ea8f41e1f6f2a) In addition, at the close of each taxable year, 75% of the REIT’s total assets must be “represented by real estate assets, cash and cash items (including receivables), and government securities.”[2](#co_footnote_I7e48c440d6ee11ea8f41e1f6f2a) [Section 856](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS856&originatingDoc=If4f560606fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) also requires management by trustees or directors with beneficial ownership by more than 100 people holding transferable shares or certificates. A REIT must distribute the income generated by its assets to the beneficiaries. The income is not taxed to the REIT. It is taxed to the beneficiaries when distributed.[3](#co_footnote_I7e48c441d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7e489d31d6ee11ea8f41e1f6f2aa78) | [26 U.S.C.A. § 856(c)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS856&originatingDoc=If4f560606fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). This list is not complete but is given here to illustrate the sources of income necessary for the entity to qualify as a REIT. |
| [2](#co_fnRef_I7e48c440d6ee11ea8f41e1f6f2aa78) | [26 U.S.C.A. § 856(c)(5)(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS856&originatingDoc=If4f560606fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7e48c441d6ee11ea8f41e1f6f2aa78) | [26 U.S.C.A. § 857](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS857&originatingDoc=If4f560606fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 19:15 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:15. Securitized or structured transactions—Commercial mortgage pools—Commercial real estate conduits

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560636fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

A commercial real estate conduit is used to assemble pools of commercial mortgage loans that will be sold on the [**secondary market**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3a51ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). Conduits are arrangements among loan originators and financial intermediaries who will market the securities backing the purchase of the loan pool.[1](#co_footnote_I7e4e4281d6ee11ea8f41e1f6f2a)

Generally, the title insurance underwriting for commercial real estate conduits follows the form of underwriting for single borrowers because the process of assembling the pool takes place after the loan is closed. As described in [§ 19:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a12&originatingDoc=If4f560636fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), to minimize the risk of [**cash flow**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d7a4eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) interruption, the conduit’s goal in assembling a pool of mortgages is to have as much diversity as possible, avoiding concentrations of individual borrowers, geographic regions, or industries. Loans placed in the pool must be created with uniform instruments and the lender may impose title insurance requirements for each loan that are motivated by the credit rating sought for the pool.

In some cases, however, a purchaser of a pool of mortgage loans may request excess title insurance coverage. The purchaser often wants insurance against the invalidity of the transaction that assigned the mortgages to it. One form of “secondary” coverage is provided by the Secondary [**Title Insurance Endorsement**](http://practicallawconnect.thomsonreuters.com/Document/I77ec1645ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) described in [§ 19:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a17&originatingDoc=If4f560636fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. Title insurers developed this form of secondary coverage for purchasers of pools of commercial mortgages from the RTC or FDIC. It also may be requested by purchasers of mortgage pools from commercial real estate conduits. Other means that purchasers of mortgage loans are utilizing to add to the title assurance that the original lender’s [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) provides them are discussed in [§ 19:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a18&originatingDoc=If4f560636fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

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| **Footnotes** | |
| [1](#co_fnRef_I7e4e4281d6ee11ea8f41e1f6f2aa78) | Forte, [From Main Street to Wall Street: Commercial Mortgage-Backed Securities, 10 Probate and Property, 8, 13 (Jan./Feb. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106551238&pubNum=0100488&originatingDoc=If4f560636fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_100488_13&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_100488_13). |

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2 Title Ins. Law § 19:16 (2020 ed.)

**Title Insurance Law** | August 2020 Update

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:16. Securitized or structured transactions—Commercial mortgage pools—Identifying who is insured

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

As is discussed more fully in §§ [4:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a4&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [4:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a34&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), the definition of the term “insured” in [**American Land Title Association (ALTA)**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) loan title insurance policies includes the insured named in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and also:[1](#co_footnote_I7e57b862d6ee11ea8f41e1f6f2a)

1. (i) The owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of section 12(c) of these Conditions and Stipulations (reserving however all rights and defenses as to any successor that the company would have had against a predecessor insured unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy as affecting the title to the estate or interest in the land);
2. (ii) any governmental agency or government instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured or not;
3. (iii) the parties designated in section 2(a) of these Conditions and Stipulations.

This definition in the 1987, 1990, and 1992 ALTA Loan Policy versions differs only slightly from the definition in the 1970 standard policy forms. The only significant change in 1987 and subsequent policies was the addition of the reservation denying status as an “insured” to a “successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations.”

The lending industry insisted on this inclusive definition of the term “insured” to make transfer of the title insurance automatic upon an assignment of the indebtedness. This feature of lenders title insurance has facilitated the marketability of mortgage indebtedness and encouraged the growth of the secondary mortgage market.

The most important feature of the policy’s definition of “the insured” is the protection it gives to a bona fide purchaser of the indebtedness, despite the existence of defenses against the assigning lender. The conventional law of assignments would place the assignee into the shoes of the assignor, making it vulnerable to any defenses that could be asserted against the assignor. The title policy’s definition squares with the protections given to a holder in due course of the indebtedness. This protection can be crucial. For example, if the originating lender is an insider in the borrower’s affairs, the definition would shield an innocent assignee for value. It makes the “nonimputation” coverages, so popular in owner’s policies, unnecessary in loan policies.[2](#co_footnote_I7e580680d6ee11ea8f41e1f6f2a) Sections [4:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a4&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [4:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a34&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise consider the importance of this protection for large commercial loans in which an originating bank acts as agent for a group of lenders. While not intended for the securities market, this structure became common in the 1990s and often uses SPEs as the mortgagors.

Sections [4:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a4&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [4:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a34&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) also discuss the effect, or lack thereof, of some lenders’ practices of adding “its successors and assigns” after the name of the “insured” in the policy’s Schedule A and of naming the originating lender together with an assignee or loan guarantor “as their interests may appear.”

Although the assignee of a mortgage becomes the insured under a loan policy automatically by operation of the policy’s definition of the term “insured,” the assignment itself will not be covered by the loan policy unless it was described in ¶ 4 of the policy’s Schedule A. [Section 5:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a11&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) examines Insuring Clause 8 of the ALTA loan policy,[3](#co_footnote_I7e582d93d6ee11ea8f41e1f6f2a) which protects against the invalidity or unenforceability of the assignment of the insured mortgage if the assignment is expressly shown in the policy’s Schedule A. [Section 5:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a11&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) also discusses endorsements that are available to cover an assignment that is not described in Schedule A because it was agreed to after the policy’s issuance.

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| **Footnotes** | |
| [1](#co_fnRef_I7e57b862d6ee11ea8f41e1f6f2aa78) | ALTA Loan Policy (10/17/92), Conditions & Stipulations ¶ (a). *See* copy reproduced at the end of this treatise in [Appendix C1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPC1&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* Comparison of 1992 and 1970 ALTA Loan Policy versions at [Appendix C2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPC2&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7e580680d6ee11ea8f41e1f6f2aa78) | *See* §§ [4:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a5&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [4:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a7&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [9:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a12&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7e582d93d6ee11ea8f41e1f6f2aa78) | The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured free and clear of all liens. ALTA Loan Policy (10/17/92). *See* copy reproduced at the end of this treatise in [Appendix C1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPC1&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* Comparison of 1992 and 1970 ALTA Loan Policy versions at [Appendix C2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPC2&originatingDoc=If4f560666fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 19:17 (2020 ed.)

**Title Insurance Law** | August 2020 Update

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:17. Securitized or structured transactions—Commercial mortgage pools—Excess coverage response to RTC nonperforming mortgage pools

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560696fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

In the early 1990s, the Resolution Trust Corporation (RTC) wound up its liquidation of assets of failed banks and savings and loan associations by packaging large pools of both performing and nonperforming mortgages. The sizes of the nonperforming mortgage pools often were immense. In some cases, the aggregate of the face value of the mortgages in the package exceeded a billion dollars. The investors in the [**syndications**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d712eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) buying these nonperforming loans wanted to be certain they would have access to the real estate assets securing the loan since there was no income stream from the nonperforming loans. Most of these nonperforming mortgage loans were insured with a lender’s [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that was issued at the time each loan was closed. As assignees, the purchasers of the mortgage pools would continue to be covered by each original loan policy for title defects that existed before the policy date. Nevertheless, the purchasers of these mortgage pools sought express coverage of any defects in the assignment from the RTC that might make their title to the mortgages in the pool invalid. The down-date endorsement, the “piggy-back” policy approach, and the Secondary [**Title Insurance Endorsement**](http://practicallawconnect.thomsonreuters.com/Document/I77ec1645ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) were all methods devised to provide those who purchased mortgage pools from the RTC or FDIC with express insurance against defects in the assignment of the mortgage portfolios to the purchasers.

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2 Title Ins. Law § 19:18 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:18. Securitized or structured transactions—Endorsement requirements for securitized transaction

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

The following is a “laundry list” of endorsements that is typical of the requirements that are being sent to title insurers for securitized transactions. Most of these endorsements are discussed more fully in Chapter 9 and many are reproduced in the appendices at the end of this treatise.

|  |  |
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| 1. ALTA 3.1 (Zoning)[1](#co_footnote_N1028AIa6a600400a3d11d9b242d) | 12. Single Tax Lot[2](#co_footnote_N10293Ia6a600400a3d11d9b242d) |
| 2. ALTA 8.1 (Environ.)[3](#co_footnote_N1029EIa6a600400a3d11d9b242d) | 13. Assignment of Loan Documents[4](#co_footnote_N102A7Ia6a600400a3d11d9b242d) |
| 3. ALTA 9 (Comp)[5](#co_footnote_N102B2Ia6a600400a3d11d9b242d) | 14. Assignment of Leases and Rents[6](#co_footnote_N102BBIa6a600400a3d11d9b242d) |
| 4. Reverter[7](#co_footnote_N102C6Ia6a600400a3d11d9b242d) | 15. Doing Business[8](#co_footnote_N102CFIa6a600400a3d11d9b242d) |
| 5. Mineral Rights[9](#co_footnote_N102DAIa6a600400a3d11d9b242d) | 16. Due execution[10](#co_footnote_N102E3Ia6a600400a3d11d9b242d) |
| 6. Access[11](#co_footnote_N102EEIa6a600400a3d11d9b242d) | 17. Mortgage tax[12](#co_footnote_N102F7Ia6a600400a3d11d9b242d) |
| 7. Address[13](#co_footnote_N10302Ia6a600400a3d11d9b242d) | 18. Usury[14](#co_footnote_N1030BIa6a600400a3d11d9b242d) |
| 8. Same as Survey[15](#co_footnote_N10316Ia6a600400a3d11d9b242d) | 19. Assessments[16](#co_footnote_N1031FIa6a600400a3d11d9b242d) |
| 9. Contiguity[17](#co_footnote_N1032AIa6a600400a3d11d9b242d) | 20. First Loss[18](#co_footnote_N10333Ia6a600400a3d11d9b242d) |
| 10. Encroachment[19](#co_footnote_N1033EIa6a600400a3d11d9b242d) | 21. Last Dollar[20](#co_footnote_N10347Ia6a600400a3d11d9b242d) |
| 11. Subdivision[21](#co_footnote_N10352Ia6a600400a3d11d9b242d) |  |

Such laundry lists of endorsements being required to satisfy credit rating agencies are not always well thought out. For example, the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 8.1 Environmental Protection Lien Endorsement is designed for residential properties. For a mortgage on commercial property, the title insurer would first have to agree to “ modify” the endorsement by deleting the language that states it is for residential properties only. Even then, using an ALTA 8.1 on a commercial property without also omitting paragraph (b), which insures against a super priority lien, exposes the title insurer to the risk that a state [**super lien**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf18a5f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for recovery of environmental cleanup costs will upset the priority of the lien of the insured mortgage in the event that the borrower is bankrupt. Since bankruptcy is a favorite refuge of those pinioned with cleanup responsibility, this risk is not as remote as it might seem. If the title insurer declines to accept the risk of a prior lien for environmental cleanup costs and only agrees to issue an ALTA 8.1 without paragraph (b), the endorsement becomes redundant, since the standard loan policy already gives the same coverage as paragraph (a) of the ALTA 8.1.

The credit rating agency’s laundry list, above, also requires both an ALTA 9 endorsement and separate endorsements insuring against rights of reverter, [**mineral rights**](http://practicallawconnect.thomsonreuters.com/Document/Id615fa0db8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), and encroachments. However, although the ALTA 9 Restrictions, Encroachments, Minerals endorsement is not a “comprehensive” endorsement, it does contain reverter, mineral rights, and encroachments coverages. The list of endorsements needed to insure title can be shortened by removing such redundant requirements.

Although some of the requirements in the credit agency’s laundry list above are redundant, the list, at the same time, seems to be missing some key endorsements. For example, the list requires a “First Loss” Endorsement but does not require an Aggregation Endorsement or even its predecessor, a “Tie-in” Endorsement. These are examined at §§ [19:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a20&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a31&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). If the securitized transaction is a multiple property transaction, both are important. On the other hand, if the transaction is not a multiple property transaction, then the First Loss Endorsement is also unnecessary.

Another example of endorsement one might expect to be required that is not on the above credit agency’s list is an endorsement to protect future advances or letter of credit disbursements. As [§ 19:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a5&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discusses, securitized transactions frequently include credit enhancement by means of letters of credit. When they do, it is a good idea to obtain from the title insurer a “letter of credit” future advance endorsement to insure the validity, enforceability, and priority of any draws made under the letter of credit or surety bond.[1](#co_footnote_I7e7ccc92d6ee11ea8f41e1f6f2a)

Some of the endorsements requested in the list above are not generally recognized endorsements, so the title insurer may ask for a precise description or an example of the endorsement required. Some of the listed endorsements, like the Mortgage Tax Endorsement and the Usury Endorsement,[2](#co_footnote_I7e7cf3a5d6ee11ea8f41e1f6f2a) will only be available if they are consistent with local law. In “form-filed” states, where title insurance forms must be on file with the state regulatory agency,[3](#co_footnote_I7e7cf3a7d6ee11ea8f41e1f6f2a) several of the requested endorsements simply will not be available.

ENDORSEMENT EXHIBITS

Exhibits of several of the endorsements discussed in §§ [19:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a18&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) that have been available from Lawyers Title Insurance Corporation are attached in abbreviated form at the end of this chapter. To make analysis of the coverage they provide easier, this group of endorsement has been stripped of all the boilerplate language that accompanies every [**title insurance endorsement**](http://practicallawconnect.thomsonreuters.com/Document/I77ec1645ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), and only the substantive language of the endorsement is exhibited.[4](#co_footnote_I7e7eef71d6ee11ea8f41e1f6f2a)

The American Land Title Association adopted various standard endorsement forms utilized in [**securitization**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) transactions in 2003 and 2004. ALTA Future Advance—Priority, Future Advance—Knowledge, and Future Advance—Letter of Credit Endorsements are reproduced at Appendices [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLsAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [14.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14.2&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this book. ALTA [**Mezzanine Financing**](http://practicallawconnect.thomsonreuters.com/Document/I4cf870bbef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Endorsement is reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP16&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). ALTA First Loss—Multiple Parcel Endorsement is reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP20&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The appendices at the end of Volume 2 of this book also include ALTA endorsements that are commonly utilized in both general real estate transactions and securitized transactions.

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| **Footnotes** | |
| 1 | Discussed at [§ 9:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a8&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [3.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP3.1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 2 | Insurance that the land is assessed as a separate tax lot is especially important where the mortgagor is supposed to be a bankruptcy remote special purpose entity. Take the time to evaluate the property involved to be certain that the endorsement meets all of the lender’s needs. In most cases, a conventional Separate Tax Lot Endorsement will suffice. *See, e.g.*, American Land Title Association Endorsement 18, Single Tax Parcel (10/22/03) reproduced in Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP18&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this book.    In those cases where multiple estates are involved, a Dual Interest Tax Lot Endorsement offers better protection. It is usually appropriate in the same circumstances that a contiguity endorsement helps (*see* item 9 above). Such an endorsement ensures that a foreclosure of a lien will not cut off or disturb the easement rights of the policyholder over the easement parcel. This is not just a tax issue, but protects the lender. *See also* American Land Title Association Endorsement 18.1, Multiple Tax Parcel (10/22/03) reproduced in Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [18.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP18.1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this treatise. |
| 3 | Discussed at [§ 9:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a13&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [8.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP8.1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 4 | *See* §§ [5:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a11&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [19:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a16&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) & [19:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a19&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* summaries of the ALTA 10 Assignment Endorsement, ALTA 10.1 Assignment & Date Down Endorsement, and CLTA 104.4 Collateral Assignment Endorsement, in Bozarth, Multi-State Mortgage Pools: Issues Regarding Perfection, Priority and Recording, Including MERS, Exhibit B-13 (1998 paper presented to ABA Real Property, Probate & Trust Law Section). ALTA Endorsement 10 Assignment is reproduced in Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP10&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of this treatise and ALTA Endorsement 10.1 Assignment & Date Down is reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [10.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP10.1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 5 | Discussed at §§ [9:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a3&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [9:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a6&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP9&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 6 | Many lenders on income-producing properties require a collateral assignment of leases and rents as extra security in addition to a mortgage. A collateral assignment of leases and rents creates a security interest in *personal property,*so the title insurer cannot insure the validity, enforceability, or priority of the lien of the collateral assignment as it can with the mortgage.    If the collateral assignment is recorded in the land records, the title insurer can state whether it has found any prior assignment of the leases and rents in the land records. Both the CLTA 104.6 and the 104.7 protect against the risk that an earlier collateral assignment has been recorded. In addition, the CLTA 104.6 insures that there is no defect in the execution of the collateral assignment. |
| 7 | Two California Land Title Association (CLTA) endorsement forms address “reverter” separately. They are discussed at §§ [19:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a20&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a31&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 8 | *See* [§ 9:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a15&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 9 | The coverage against claims of mineral rights in the CLTA 100.29compares to the coverage given by the ALTA 9. *See* §§ [9:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a3&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [9:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a6&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP9&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 10 | Insuring clause 5 of the standard ALTA loan policy protects a lender against the invalidity or unenforceability of the lien of the insured mortgage. This makes a Due Execution Endorsement redundant. |
| 11 | *See infra* discussion in [§ 9:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a20&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and ALTA endorsement forms reproduced in Appendices [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP17&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [17.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP17.1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this treatise. |
| 12 | *See* [§ 9:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a20&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 13 | *See* Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP22&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), ALTA Endorsement 22-06 Location; and Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [22.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP22.1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), ALTA Endorsement 22.1-06 Location & Map. |
| 14 | *See* [§ 9:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a15&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 15 | *See* [§ 9:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a6&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 16 | The CLTA 100.13insures over assessments levied under the provisions of a document, usually a declaration, excepted to in Schedule B. It does not insure against assessments levied pursuant to a law or ordinance. |
| 17 | *See infra* discussion in [§ 9:22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a22&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and ALTA endorsement forms reproduced in Appendices [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [19.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19.1&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this treatise. |
| 18 | *See infra* discussion in § [19:27](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a27&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:30](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a30&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and endorsement language that has been available from Lawyers Title in Appendix 19G of this chapter. *See also* First Loss—Multiple Parcel Transaction Endorsement Form 20 promulgated by the American Land Title Association in April 2004 at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP20&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this treatise. |
| 19 | *See* [§ 9:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a5&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| 20 | *See infra* discussion in [§ 19:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a31&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and endorsement language that has been available from Lawyers Title in [Appendix 19H](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19H&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this chapter. |
| 21 | *See* [§ 9:22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a22&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [1](#co_fnRef_I7e7ccc92d6ee11ea8f41e1f6f2aa78) | *See* [§ 19:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a5&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* American Land Title Association standard endorsement forms for this purpose adopted in 2003 in Appendices [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP14&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14.1 & AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP14.1+%26+AA&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [14.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP14.2&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of Volume 2 of this book. Additionally, *see* excerpts of the key language from earlier endorsement forms that Lawyers Title Insurance Corporation issued at [Appendix 19A](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19A&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Appendix 19C](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19C&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of this chapter. |
| [2](#co_fnRef_I7e7cf3a5d6ee11ea8f41e1f6f2aa78) | *See* [§ 9:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a17&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7e7cf3a7d6ee11ea8f41e1f6f2aa78) | *See* [§ 18:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a17&originatingDoc=If4f5606c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I7e7eef71d6ee11ea8f41e1f6f2aa78) | For example, most endorsements identify the file and policy numbers of the policy they amend and end with the following language:  This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof. |

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2 Title Ins. Law § 19:19 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:19. Assignments of mortgage portfolios as collateral[1](#co_footnote_I7e888c60d6ee11ea8f41e1f6f2a)

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

A collateral assignment is a means of securing a loan to a mortgage lender by taking a pledge of mortgages in the lender’s inventory. Although we may think of lenders as a source of funds, lenders may sometimes need more cash. If they must borrow the cash, they may need collateral to secure repayment of the loan. A lender’s inventory is the portfolio of notes and mortgages it holds. It can pledge these notes and mortgages to its lender as security for a loan.

As discussed more fully in §§ [4:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a4&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [4:34](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a34&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [19:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a16&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), the lender’s [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) obtained when the loan and mortgage were first made continues to cover the mortgage lien in the hands of an assignee of the debt and mortgage. Title insurers cannot insure the assignment transaction itself in a collateral assignment because a collateral assignment is a security interest in personal property. However, the collateral assignee will be covered by the original loan policy for defects in the mortgage lien that is security for the debt that existed at the policy date. The collateral assignee may want to obtain an endorsement to each loan policy, such as the CLTA 104.4. The CLTA 104.4 is very similar in approach to the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 10.[2](#co_footnote_I7e8a1300d6ee11ea8f41e1f6f2a) It identifies the assignee; insures that the beneficial interest in the mortgage has been collaterally assigned; and protects against earlier reconveyances (releases), modifications, or subordinations of the mortgage appearing in the records. Because title insurers cannot insure the validity or enforceability of the security interest in personal property created by the collateral assignment, the CLTA 104.1 does not attempt add the collateral assignment as an insured instrument under the original title insurance policy.

A more difficult and expensive approach to insuring that each mortgage lien continues to be valid and enforceable is for the collateral assignee to purchase new title insurance policies. The collateral assignee can use this approach if there was no title insurance policy insuring the original mortgage or if the collateral assignee wants a new policy in the amount of the loan it makes to the original lender. Typically, the assignee will ask for a policy amount that is less than the amount of the original mortgage loan. Therefore, the title insurance company will want to make certain the new policy is issued for the protection of the collateral lender only. Otherwise, the insurer risks finding that it insured the loan itself for a price below the value of the loan. No policy form has yet been designed for this situation. However, the standard ALTA loan policy may be amended for this purpose by adding the following note to Schedule B:

NOTE: Anything in the Conditions and Stipulations to the contrary notwithstanding, it is stipulated and agreed that this policy is issued for the protection of the named insured, its successors and assigns, solely as holder of a debt of \_\_\_$ due and owing by \_\_\_ and for no other purpose.

Since the mortgage or [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is only conditionally assigned to the collateral lender, if the collateral assignment is insured by showing it in the policy’s [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), then one of the following exceptions must be shown in Schedule B:

Terms, conditions and limitations of the assignment set forth under Schedule A hereof, collaterally assigning the insured mortgage to the named insured

or

Any and all interests and rights of the assignor of the insured mortgage by reason of the fact that the assignment thereof is a collateral assignment.

Although the mortgage or deed of trust constitutes a lien on real estate, a pledge of a mortgage is subject to the perfection requirements of Article 9 of the Uniform Commercial Code. For this reason, title insurers will require evidence, such as a written acknowledgement from the collateral lender, that it had obtained possession of the note at the time it disbursed the loan proceeds.

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| **Footnotes** | |
| [1](#co_fnRef_I7e888c60d6ee11ea8f41e1f6f2aa78) | *See* [§ 19:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a19&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) was written and contributed by Robert S. Bozarth, Vice President and Major Transactions Counsel, Fidelity National Title Insurance Company. *See* biographies of contributing authors at vii. Joyce Palomar edited [§ 19:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a19&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to conform its style to that of the rest of this treatise. |
| [2](#co_fnRef_I7e8a1300d6ee11ea8f41e1f6f2aa78) | *See* §§ [5:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a11&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [19:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a16&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [19:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a18&originatingDoc=If4f5606f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* summaries of the ALTA 10 Assignment Endorsement, ALTA 10.1 Assignment & Date Down Endorsement, and CLTA 104.4 Collateral Assignment Endorsement, in Bozarth, Multi-State Mortgage Pools: Issues Regarding Perfection, Priority and Recording, Including MERS, Exhibit B-13 (1998 paper presented to ABA Real Property, Probate & Trust Law Section). |

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2 Title Ins. Law § 19:20 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:20. Multiproperty and multistate transactions—Aggregation endorsement[1](#co_footnote_I7e922951d6ee11ea8f41e1f6f2a)—Aggregation

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Special problems arise when a transaction involves a “blanket” loan secured by mortgages or deeds of trust on more than one parcel of real property. The lender and title insurer must choose between using one policy insuring all the parcels or using individual policies for each parcel. Individual policies for each parcel limit the coverage for each parcel to the amount stated on [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the policy insuring that property, while a single policy for all parcels “aggregates” the amount of insurance, potentially all of which could be applied to one insured property. Title insurers developed the “tie-in” endorsement to combine advantages of both.

In October 1996, the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) adapted the most common form of tie-in endorsement into a new standard form and named it the “Aggregation Endorsement.”[2](#co_footnote_I7e925061d6ee11ea8f41e1f6f2a) By aggregating the coverage amounts, lenders are able to reduce their risk of loss due to inflation and fluctuations in real property values. Aggregating coverage amounts traditionally has been done only with ALTA *loan* policies where the entire loan is secured by each property. Until 2006, ALTA owner’s policies contained an “Apportionment” condition that prevents aggregation of owner’s coverages.[3](#co_footnote_I7e925064d6ee11ea8f41e1f6f2a) This apportionment condition limited recovery under an owner’s policy to the pro rata allocation or value of the affected property on the date of the policy and prevents shifting of coverage from an unaffected property to the affected property. Because ALTA Loan Policy forms and the 2006 ALTA Owner’s Policy do not contain this apportionment condition, the insured is not restricted from “shifting” coverage from an unaffected property to a property affected by a title defect to realize any appreciation in value of the affected property as an offset for a diminution in value of unaffected properties.

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| **Footnotes** | |
| [1](#co_fnRef_I7e922951d6ee11ea8f41e1f6f2aa78) | Sections [19:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a20&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a31&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) were written and contributed by Robert S. Bozarth, Vice President and Major Transactions Counsel, Fidelity National Title Insurance Company. *See* biographies of contributing authors at vii. Joyce Palomar edited §§ [19:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a20&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [19:31](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a31&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to conform its style to that of the rest of this treatise. |
| [2](#co_fnRef_I7e925061d6ee11ea8f41e1f6f2aa78) | The ALTA 12 Aggregation Endorsement is reproduced at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP12&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of this treatise. |
| [3](#co_fnRef_I7e925064d6ee11ea8f41e1f6f2aa78) | *See* at [Appendix B & B1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPB+%26+B1&originatingDoc=If4f560726fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), ALTA Owner’s Policy Form B-1970, Conditions and Stipulations ¶ 10 and ALTA Owner’s Policy (October 17, 1992), Conditions & Stipulations ¶ 8. |

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2 Title Ins. Law § 19:21 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:21. Multiproperty and multistate transactions—Aggregation endorsement—“Blanket” lien requirement

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587506fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Assume, for example, that Real Fast Foods, a new Richmond fast food entrepreneur, has five properties to mortgage to its lender NBVA as shown in the figure above. NBVA can structure its [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) lien in two basic ways. It may use a “blanket” lien for the entire indebtedness on each property or it may use an individual deed of trust for each parcel to secure an allocated portion of the loan.

If NBVA requires deeds of trust that secure an allocated portion of the loan against each property, the title insurance coverage cannot be aggregated because the lender’s loss in excess of the allocated amount was created by the limitation on the lien of the deed of trust caused by the allocation. Even if each deed of trust contains provisions that cross-default and cross-collateralize it with all the others, if it does not secure the entire amount of the loan, that limitation on the amount secured by the lien also limits the title insurance coverage. To aggregate title insurance coverage, the interest insured must be an aggregate lien for the entire amount, which is frequently called a “blanket” lien.

A “blanket” lien must state the entire indebtedness that NBVA seeks to secure with all five parcels. It is cross-defaulted and cross-collateralized by its very nature since it is a single loan. It does have one weakness. It can defeat the isolation sought when a borrower is structured with [**Special Purpose Vehicles**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1944f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to hold title to the security. In many transactions this is overcome with an allocated first mortgage and a blanket second mortgage.

[​Image 1 within document in PDF format.](http://practicallawconnect.thomsonreuters.com/Link/Document/Blob/I40888ff027e111deabb4ecfb27adb87a.pdf?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.DocLink))



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2 Title Ins. Law § 19:22 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:22. Multiproperty and multistate transactions—Aggregation endorsement—Individual policies without an aggregation endorsement

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587536fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

If the title insurer issues an individual policy on each of the five sites without an aggregation endorsement, the title insurance coverage on each site is limited to the face amount of its respective policy. The lender would be unable to shift coverage from a site not suffering a title loss to one that has suffered a loss greater than its original allocated amount. Individual policies are easier to review and title companies can generally produce them more promptly than a single policy, but this inability to shift the coverage from one site to the next is a material disadvantage.

Of course, one solution might be to buy more insurance. For example, if the borrower is restricted to a loan not to exceed 80% of the value of the real estate, a loan policy issued for the full value of the property may provide enough cushion. Where the borrower is buying owner’s policies as well as loan policies, this technique would cost no more than ordering loan policies at the allocated amount because the simultaneous premium rate would apply to both. Some lenders initially ask their borrowers to buy a policy on each property in the full amount for the loan, but this requirement is unnecessarily extravagant. If the policies are each issued for the entire loan amount, the premium charged would be four times greater than it should be.

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2 Title Ins. Law § 19:23 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:23. Multiproperty and multistate transactions—Aggregation endorsement—Aggregating with a single loan policy

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Title insurers often insure several noncontiguous parcels in one owner’s or loan policy if all the land is located within the same county or metropolitan area. A single branch office or agent will include the property description of each property in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of one policy as “Parcel 1, Parcel 2, Parcel 3, etc.” Indeed, the aggregation endorsement is designed to replicate the coverage of a single loan policy.[1](#co_footnote_I7eaa1e21d6ee11ea8f41e1f6f2a)

If the properties are not contiguous and assembled into one large tract (which would virtually mandate a single policy), the decision to use either one policy or several policies generally will depend on how many issuing offices are involved. In the illustration above, the five properties are not contiguous.

If the properties are all located in one jurisdiction, the lender can ask for one policy, and the absence of the apportionment provision in the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) loan policy means that, if there is a loss on one property, theoretically the entire policy amount can be applied to the loss on that property. Shifting coverage is necessary only if the affected property has increased in value since the policy was issued and other properties, unaffected by title losses, have fallen in value. Of course, the coverage available for the other properties is diminished by the amount paid, but the lender must foreclose on all four properties to prove its loss and the foreclosures should uncover any other title defects. Even if a defect survives the foreclosures undiscovered, and the lender buys all the properties in at the foreclosure sale, the risk of suffering a loss on more than one property is slight. Thus the lender has maximized its recovery under its policy and has achieved a form of inflation protection. Of course, even where coverage is aggregated, the lender’s “loss” under a loan policy cannot exceed the lesser of:

1. (1) its actual monetary loss (the diminution in value of the insured property as a result of the defect);[2](#co_footnote_I7eaa6c43d6ee11ea8f41e1f6f2a)
2. (2) the amount of insurance stated in Schedule A of the policy; or
3. (3) the amount of principal indebtedness, together with interest, secured by the insured mortgage at the time the loss occurs.

Title insurers resist using a single policy if the properties are located in several jurisdictions and several issuing offices will be involved because the preparation and review of individual segments of the policy by each office are cumbersome and result in a greater chance of mistakes and delay. Even when all properties involved are located in one state, a single policy has other drawbacks compared to having an individual policy issued for each parcel. For example, it can be more difficult to determine which of the exceptions contained in Schedule B of the policy relates to each property described in Schedule A.

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| **Footnotes** | |
| [1](#co_fnRef_I7eaa1e21d6ee11ea8f41e1f6f2aa78) | For discussion of title insurance policies’ requirement of an “actual loss” and courts’ interpretations of the policy’s meaning, *see* §§ [5:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a3&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a18&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [6:23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a23&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [10:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a8&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [10:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a12&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also supra* §§ [19:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a20&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [10:30](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a30&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and ALTA’s standard Aggregation Endorsement at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP12&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of this book. |
| [2](#co_fnRef_I7eaa6c43d6ee11ea8f41e1f6f2aa78) | For a discussion of title insurance policies’ requirement of “actual loss” and courts’ interpretations of the policy’s meaning, *see* §§ [5:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a3&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a18&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [6:23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a23&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [10:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a8&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [10:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a12&originatingDoc=If4f587566fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 19:24 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:24. Multiproperty and multistate transactions—Aggregation endorsement—Using separate loan policies with aggregation endorsements

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587596fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

When the parcels are scattered in different areas, even when the areas are contained within one state, it has been the custom to open the title order for individual policies for each parcel with an office in each parcel’s locality. Instead of single policies that cover all parcels, individual policies covering each parcel generally are issued.

As we have seen, individual policies for each parcel can be produced more quickly and accurately and the coverages can be reviewed more easily than a single policy that covers all parcels, but the amount of coverage suffers by losing the ability to aggregate amounts. Adding an aggregation endorsement to each single policy for all parcels or individual policies restores the ability to shift coverage among the properties, but without sacrificing the efficiencies of using single policies.[1](#co_footnote_I7eb76490d6ee11ea8f41e1f6f2a)

The aggregation endorsement is designed to be used with individual policies to reach the same result as would a single policy insuring multiple parcels under a blanket mortgage, while eliminating the drawbacks of both. The aggregation endorsement resolves the problems created with a single policy by aggregating the coverage of a number of individual policies issued in the amount allocated for the individual sites. Review of title is simplified because the exceptions for a particular property are the only exceptions that will appear in the individual policy for that property. The endorsement aggregates the policy amounts, and allows the lender to shift coverage among the properties as if they were all located in the same city and insured with one policy. The [**loan to value**](http://practicallawconnect.thomsonreuters.com/Document/I61c3ec11677d11e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) ratios of the properties must be equal and reflect either the full amount of the loan or the full fair market value of the land to avoid questions of rate discrimination. In many cases, the aggregate value of all the mortgaged properties may substantially exceed the amount of indebtedness. If so, the market value of the property should not be used as the allocated value; it is more accurate to require equal loan to value ratios on all properties.

An aggregation endorsement should be issued only under the following circumstances:

1. (a) It will be issued on loan policies only;
2. (b) The loan amount must be secured by mortgages on two or more properties;
3. (c) The insured mortgages must each secure the entire indebtedness;
4. (d) The loan to value ratios on all mortgages must be equal;
5. (e) Each policy will be issued with the “Amount of Insurance” shown on Schedule A of the policy equal to the amount the insured allocates to the property described in Schedule A, not to the total aggregate amount shown on the aggregation endorsement;
6. (f) Policies of one title insurer cannot be aggregated with policies issued by another.

See also *supra* [§ 9:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a19&originatingDoc=If4f587596fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) regarding an additional issue when multiple loan policies and aggregation endorsements are issued with a [**revolving credit loan**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d929eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that is secured by properties that come and go in a pool of mortgage security.

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| **Footnotes** | |
| [1](#co_fnRef_I7eb76490d6ee11ea8f41e1f6f2aa78) | *See* ALTA’s standard Aggregation Endorsement at Appendix [AA](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPAA&originatingDoc=If4f587596fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))- [12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP12&originatingDoc=If4f587596fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of this book. |

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2 Title Ins. Law § 19:25 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:25. Multiproperty and multistate transactions—Aggregation endorsement—Multistate applications

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5875c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

If the properties are located in different states, the problem becomes more cumbersome. In some combinations of states, the policy form that must be used in one state cannot be used in another. Even where a common policy form is available in each state, using one policy to insure all the sites usually requires patience, at a minimum, from the insured. The finished policy must be sent to each local office for review before it is issued. Many states require a countersignature of an agent licensed and domiciled within that state on insurance policies. If many properties are involved, the policy can be quite lengthy and difficult for the insured to review. Since the policy must be in the blanket amount, there will be problems in many states if the premium collected in that state is less than the premium for the blanket amount. Most states have statutes prohibiting insurance companies from discriminatory or unfair pricing, and they enforce their laws with market conduct audits.

From a state regulator’s perspective, the most troubling consequence of using either an aggregation endorsement or a single loan policy to insure the lien of a blanket mortgage on properties in more than one state is the effect on premium rates and premium taxes. Under either, the premium and premium taxes on a property within a state will be based upon the amount of the loan allocated to the property or properties located in that state, but the potential coverage can exceed that allocation if the insured property increases in value. The increase in coverage in one state may come at the expense of coverage purchased on properties located in other states where the premium rates may be substantially higher or lower. Consequently, in states having filed premium rates, the premium on the potential coverage may be greater than the filed rate, but there is no way to ascertain whether coverage will be shifted to or from a particular property when the insurance is issued.

The problem can be compounded when the borrower and lender seek to pare the title insurance premium by (i) allocating higher [**loan to value**](http://practicallawconnect.thomsonreuters.com/Document/I61c3ec11677d11e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) ratios in states where the rates are low and (ii) allocating lower loan to value ratios in states where the rates are high. Such a practice is an obvious manipulation of title insurance premium rates that can result in an unfairly discriminatory rate for the benefit of the party paying for the insurance.

The aggregation endorsement cannot be used to aggregate coverage on properties in Florida, New Mexico, North Carolina, Pennsylvania, or Texas with properties in any other state, but either a single policy or aggregation endorsements can be used to combine coverage among several properties located within each of these states.

In addition, although this group of states prohibits aggregating the insurance of a property within their boundaries with insurance on a property outside their boundaries, title insurers can tie the insurance on a property outside one of these states with the insurance on a property in the state. Title insurers call this a “one-way tie-in”; it allows the insured to shift coverage from the state with the prohibition to a state without one. For example, if Real Fast Foods in the first illustration develops a new site in Charlotte, North Carolina, the title insurer could add an aggregation endorsement to the loan policy on all other properties that identifies the North Carolina site, but it cannot give an aggregation endorsement on the North Carolina site identifying the Virginia sites. If that property were located someplace else, in West Virginia, for example, title insurers could amend the existing endorsements to add the new site.

The states that allow interstate aggregation have agreed to do so if the title companies avoid practices that manipulate the rating structure. Fortunately, it is relatively easy to remain within the guidelines and aggregate the coverage on multistate loans.

[​Image 1 within document in PDF format.](http://practicallawconnect.thomsonreuters.com/Link/Document/Blob/I40b2d44027e111deabb4ecfb27adb87a.pdf?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.DocLink))



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2 Title Ins. Law § 19:26 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:26. Multiproperty and multistate transactions—Aggregation endorsement—Clustering

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5875f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

If each of the five properties is valued at $400 million and the industry capacity is only $1.5 billion for the states involved, aggregating the coverage will create a risk of $2 billion which exceeds the industry capacity, forcing the insured into a coinsuring posture. Of course, these properties could be insured as single risks (assuming that there is no “common thread” coverage like omission of the creditor’s rights exception that can upset the entire transaction) without testing the industry capacity. However, insuring the properties as single risks leaves the insured without aggregated coverage.

As a compromise, groups of properties with an aggregate value substantially below the industry capacity can be aggregated into “clusters” giving the lender the protection it demands within each cluster. This cluster device avoids the dilemma of forcing a coinsurance situation because the industry insuring capacity is too low for the transaction, or requiring the lender to accept insurance on each property as a separate risk without the benefit of aggregating the values; a popular solution when large amounts are involved, secured by a large number of properties.

Each cluster must be independent of the others, so they should be organized with a single note for each cluster. There should not be any [**cross-collateralization**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0f30ef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), default, or contribution rights with properties in any other cluster. Some lenders become concerned when their aggregation is split into clusters, but aggregation between two or three properties is all that any lender should ever need.

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2 Title Ins. Law § 19:27 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:27. Multiproperty and multistate transactions—“First loss” endorsements

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587626fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

The “first loss” endorsement[1](#co_footnote_I7ed6ac61d6ee11ea8f41e1f6f2a) is requested by lenders in some multiproperty transactions to accelerate the payment of a loss under a loan policy if the value of one of the properties is diminished by a matter covered by the title insurance. This first loss coverage entitles the lender to a payment on a loss without requiring foreclosure of all of its security (subject to certain limitations). Lenders seeking first loss think it gives them the same protection in a title insurance claim as if the loan was secured by a single property, but in practice first-loss coverage goes beyond that.

If a loan is secured by one property and that property is affected by a title defect that substantially reduces its value, the lender can declare a default, accelerate the indebtedness, foreclose (unless foreclosure is futile), and seek indemnity from its title insurer to the extent that its security is inadequate to repay the loan, interest, and costs as a result of a defect in title covered by the title insurance. The decision to foreclose and realize upon the collateral is rarely complicated by the problem of whether the borrower could survive without the property; because in most cases it can’t.

In multiproperty transactions, however, lenders are concerned about the consequences of potential title defects affecting just one of the properties that may cause a substantial loss of value to that property and impair the security for the loan. The lender’s choice either to accelerate the indebtedness to protect itself or to allow the loan to continue to protect the borrower becomes complicated if the lender has an otherwise financially healthy borrower capable of surviving the loss of the affected property. If the lender accelerates and forecloses against all of its security to protect itself, it will destroy its borrower; if it does not accelerate, it may be undersecured and runs the risk that it may suffer a greater loss later. Under a loan policy of title insurance, however, the title insurer’s position is that such a lender has suffered no loss requiring indemnity because: (i) the coverage will continue to protect the lender from loss as a result of the defect, in effect replacing the value lost in the property securing the loan; (ii) most loan security packages include more value in the collateral than is loaned, and (iii) the other unaffected properties may adequately secure the loan.

The first-loss coverage can be “triggered” only by a loss of more than 10% of the amount of coverage stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the policy to protect the title insurer from minor claims that do not involve a material impairment of the lender’s security. The borrower should dispose of such minor problems. However, this trigger amount is not a deductible; once it has been met, the insured is entitled to a payment on its entire loss up to the limit of the first-loss coverage. First-loss coverage is capped by the amount of insurance stated in Schedule A of the policy. If the coverage of the policy has been combined with an aggregation endorsement, the 10% trigger is still calculated from the amount stated in Schedule A of the policy (which will be either the purchase price, fair market value, or allocated value of the individual property), not the aggregated amount. Any appreciation in the value of the property due under the policy from a shift of coverage under an aggregation endorsement can only be recovered later when a loss has been established by foreclosure of the collateral securing the loan.

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| **Footnotes** | |
| [1](#co_fnRef_I7ed6ac61d6ee11ea8f41e1f6f2aa78) | *See* copy of endorsement language used by Lawyers Title Insurance Corporation at [Appendix 19G](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19G&originatingDoc=If4f587626fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) at the end of this chapter and copy of ALTA First Loss-Multiple Parcel Endorsement 20 which became available in April 2004. |

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2 Title Ins. Law § 19:28 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:28. Multiproperty and multistate transactions—“First loss” endorsements—Concept of “loss”

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Under either a loan or owner’s policy of title insurance, a policyholder must first suffer a “loss” before its title insurance carrier is obligated by the policy to pay a claim because title insurance is an indemnity line of insurance. Although not all courts agree, title insurers maintain that a lender will not suffer a loss under the policy’s terms until: (i) it has realized upon all of its collateral, and (ii) the proceeds of the sale of the collateral are insufficient to repay the lender because at least some of the value of the collateral was lost to a matter covered by the title insurance.[1](#co_footnote_I7ee35690d6ee11ea8f41e1f6f2a) In contrast, an owner or lessee realizes a “loss” under an owner’s or leasehold policy as soon as a defect in title reduces the value of its property because this insured has an owner’s or possessory interest, not just a security interest, in the property.[2](#co_footnote_I7ee48f13d6ee11ea8f41e1f6f2a) Consequently owner’s and leasehold policies are “first loss” policies by their very nature.

If both owner’s and loan policies are issued in a transaction, first-loss coverage in the loan policy might be considered the title insurance equivalent of an “assignment of benefits provision” to the lender. Assignment of benefits provisions are typically found in policies of casualty lines of insurance, for example, automobile collision and comprehensive policies and homeowner’s fire policies, making a loss in a policy issued to the owner of property payable first to a lender/payee to the extent of its lien on the automobile or building, with the remainder to the owner. By using an assignment of benefits clause, property/casualty lines can use one policy to protect both owner and lender, instead of two separate policies as used in title insurance. Of course, this results in identical coverage for both the borrower and lender.

The holder of a loan policy in a multiproperty transaction is protected against loss under the terms of the policy whether or not the policy contains a first-loss endorsement. It cannot be overemphasized that first loss coverage applies to the timing of the title insurer’s obligation *to indemnify* the insured for a loss. Neither first-loss coverage nor its trigger affects the insurer’s obligation to defend the insured’s title. The insurer is obligated to defend the policyholder against an adverse claim or interest covered by the policy as soon as the policyholder notifies the company of the claim.

Even if the title insurer is unable to defeat the adverse claim and render the title as insured, title insurers maintain that payment of the amount the lender is undersecured before acceleration of the indebtedness is not necessary because the loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) protects the lender’s security. In the insurer’s view, the lender’s security interest shifts from the value lost to the title defect to the liability of the title insurer. Even if no payment may be due when the defect is discovered, the title insurer will become obligated to indemnify its insured if the loss is realized later. So the lender remains fully “secured” and is thus left in the same position that it would have been in had no title defect appeared. Under its loan security documents, the lender would not expect to liquidate the security until its borrower defaults and it chooses to accelerate the entire indebtedness.

Lenders in multiproperty transactions complain that the “loss” requirement of loan policies requires foreclosure on all the properties in the security to establish a loss. The same lenders recognize that foreclosure on all the properties in the security is the remedy they established in their mortgages. So if there is no title defect, they must foreclose on all properties securing their loan whether or not the policies contain first loss coverage.

Lenders find the prospect of an immediate payment to recover value lost on such a property at the time the loss occurs attractive, but what happens if the borrower is not crippled by a title defect to just one of its properties and its lender has first loss coverage? The lender will receive, in effect, an early partial payment on its loan from the title insurer. There is a cost to the borrower for this windfall to the lender.

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| **Footnotes** | |
| [1](#co_fnRef_I7ee35690d6ee11ea8f41e1f6f2aa78) | [First Commerce Realty Investors v. Peninsular Title Ins. Co., 355 So. 2d 510, 511 (Fla. Dist. Ct. App. 1st Dist. 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978112764&pubNum=0000735&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_511&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_511). The mortgagor did not have title to five lots included among the properties secured by the mortgage. After foreclosure the lender (who bought the collateral in) showed that the value of the security with the five lots was $1,823,500, but the value without the lots was $1,731,500. The principal, interest, costs, and attorney’s fees in the foreclosure totaled only $1,567,518.48 and the title policy was in the amount of $1.6 million. The value of the property at the time First Commerce acquired it, according to First Commerce’s own evidence, was in excess of both the amount of the mortgage and the maximum insured interest. As a result, First Commerce can show no loss which entitles it to indemnification. *See also*, [Foothill Capital Corp. v. Commonwealth Land Title Ins. Co., 1987 WL 19896 (E.D. Pa. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987142966&pubNum=0000999&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [862 F.2d 307 (3d Cir. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988143010&pubNum=0000350&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Blackhawk Production Credit Ass’n v. Chicago Title Ins. Co., 135 Wis. 2d 324, 400 N.W.2d 287 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987013619&pubNum=0000595&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), decision rev’d on other grounds, [144 Wis. 2d 68, 423 N.W.2d 521 (1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988068652&pubNum=0000595&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Green v. Evesham Corp., 179 N.J. Super. 105, 430 A.2d 944 (App. Div. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981127042&pubNum=0000162&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); and [Goode v. Federal Title & Ins. Corp., 162 So. 2d 269 (Fla. Dist. Ct. App. 2d Dist. 1964)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1964130157&pubNum=0000735&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* other cases cited at §§ [6:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a19&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a20&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a8&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [10:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a10&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7ee48f13d6ee11ea8f41e1f6f2aa78) | *See* [Hartman v. Shambaugh, 96 N.M. 359, 630 P.2d 758 (1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129865&pubNum=0000661&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Sullivan v. Transamerica Title Ins. Co., 35 Colo. App. 312, 532 P.2d 356 (App. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975125447&pubNum=0000661&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Overholtzer v. Northern Counties Title Ins. Co., 116 Cal. App. 2d 113, 253 P.2d 116 (1st Dist. 1953)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1953112427&pubNum=0000661&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* other cases cited at §§ [6:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a19&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a20&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a8&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [10:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a10&originatingDoc=If4f587656fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 19:29 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:29. Multiproperty and multistate transactions—“First loss” endorsements—Cost of “first loss” coverage

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587686fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

The risks inherent in the two different methods of recognizing loss in (i) owner’s and leasehold policies and (ii) loan policies justify the differential in the rates charged for these policies. In general, loan policies of title insurance are not as expensive as owner’s policies because a lender might not suffer a “loss” just because a defect in title reduces the value of part of the security. If the proceeds from the sale of the unaffected security are sufficient to repay the loan, outstanding interest, late fees, expenses, and costs that can be recovered by foreclosure of the mortgage, title insurers maintain that the lender will have no “loss” under the policy. Because lenders usually require a cushion of value (measured by a “[**loan to value**](http://practicallawconnect.thomsonreuters.com/Document/I61c3ec11677d11e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) ratio”) in the collateral to protect them against fluctuations in value, and property values generally increase, the risk on a loan policy is not as great as the risk on an owner’s policy.

The risk of a first-loss payment is at least as great to the title insurer as the risk of paying under an owner’s policy. Because the risk under a loan policy is not as great as the risk under an owner’s policy, title insurers generally have given the lender more affirmative coverages than they would have given an owner. This is especially true in the larger transactions, which, coincidentally, frequently involve more than one property. Thus, the first-loss risk in a loan policy usually involves affirmative coverages that do not appear in the owner’s policy. First-loss coverage is also more risky for the insurer than an assignment of benefits because the lender is not subject to defenses that the title insurer may have against an owner under its owner’s policy. The lender receives the benefits without the defenses.

Therefore, title insurers usually require the purchase of an owner’s policy and a simultaneous issue of the loan policy[1](#co_footnote_I7eeec841d6ee11ea8f41e1f6f2a) as a condition to issuing first-loss coverage. If the loan is in an amount less than the aggregate fair market value of the properties insured (a low loan to value ratio), the combination of the higher rate for an owner’s policy and the insurance for the full market value of the property can drive the premium for this coverage substantially higher than loan coverage without first-loss coverage, with little benefit to the lender. The illusion of benefit is exposed in the following hypothetical situations:

Assuming no first-loss endorsement. If one property in a multiproperty transaction is discovered to suffer a title defect insured by the lender’s policy at a time when the borrower is financially sound and operating, the title insurer must respond in a defense of the title on behalf of its insured but will not pay a “loss” to the lender then, even if it is unable to render the title as insured. The lender still has (i) a viable borrower, and (ii) the insurance coverage to protect it if the borrower later defaults resulting in a realization of a loss due to the title defect. The title insurer will maintain that the loan has the same security as it had when the title policy was issued. The title insurance company must pay any loss after the insured establishes that the title defect has diminished the amount it was able to recover on its security.

Assuming first-loss coverage. If the lender had first-loss coverage under the same circumstances, after the title insurer has been unable to render the title as insured, the lender must first meet the 10% “trigger” requirement of the coverage. The title insurer will then assert that the lender must “establish the loss” [usually through foreclosure of the affected property, unless foreclosure would be futile] to be entitled to payment under the endorsement. Thus, the title insurer may require that the borrower be subjected to a foreclosure on a property that may have suffered a loss of value exceeding 10%, but may not be useless for profitable operation.

Thus, the title insurer bears a risk that is incompatible with its indemnity structure, requiring the greater premium, and leaves it with a later right of subrogation to the lenders’ rights against the borrower after the loan has been satisfied. The greater risk to the title insurer and increased cost to the borrower do not result in a comparably substantial benefit to the lenders. The only interest the lenders have in the property is a security interest, and that is not lost since the lender’s title insurance assures the lender will be repaid the value of its security interest without the title defect if the borrower defaults. The borrower must assure itself that any payment made under the first-loss endorsement curtails its obligations to the lenders under the loan documents, or the lenders may have bargained for a windfall.

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| **Footnotes** | |
| [1](#co_fnRef_I7eeec841d6ee11ea8f41e1f6f2aa78) | Generally, there is only a nominal charge for the loan policy. |

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2 Title Ins. Law § 19:30 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:30. Multiproperty and multistate transactions—“First loss” endorsements—Underwriting requirements for first loss coverage

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5876b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

The following requirements must be followed for a title insurer to be willing to give first-loss coverage:

1. (a) The endorsement is designed for loan policies only.
2. (b) The transaction must involve insurance of the lien of mortgages on multiple sites.
3. (c) The coverage will be authorized only if the borrower purchases owner’s title insurance for the purchase price or fair market value of the properties involved at regular owner’s rates.
4. (d) Authorization for issuing the coverage must be secured from the appropriate authority in the title insurance company.

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2 Title Ins. Law § 19:31 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:31. Multiproperty and multistate transactions—“Last dollar” endorsements

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f5876e6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

The inspiration for the Last Dollar Endorsement[1](#co_footnote_I7efad631d6ee11ea8f41e1f6f2a) came from a realization that ¶ 9(b) of the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 1987–1992 Loan Policy’s Conditions and Stipulations could impair the insurance coverage for a mortgage in many common situations. This condition provides:

*Payment in part by any person of the principal of the indebtedness,* or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, *shall reduce the amount of insurance* pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). [Emphasis added].

The idea of reducing the *amount of insurance* makes little sense when the 1987–1992 policies also limit the *liability* of the title insurer under Condition 7 to the indebtedness remaining at the time of the loss. Condition 9(b) of the 1987–1992 ALTA Loan Policies, therefore, appears wholly unnecessary and it can have some pernicious effects. Its operation in a [**revolving credit loan**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d929eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) could destroy the insurance coverage as the borrower draws on the credit line and pays it down during the term of the loan. The payments would reduce the amount of insurance, but a series of optional advances made to the borrower would not restore the coverage under the standards expressed in ¶ 9(b). It also threatens loans where the value of the insured property is only a fraction of the loan amount. If the title policy was issued in the amount of $10 million (the value of the property), but the loan was made in the amount of $100 million and was also secured by other assets, the lender would be dismayed to learn that the title insurance was gone as soon as the borrower curtailed the outstanding balance below $90 million.

The last-dollar endorsement was devised to prevent application of Condition 9(b) of ALTA 1987–1992 Loan Policies to reduce the title insurer’s liability because of payments on the indebtedness secured by the insured mortgage, unless the payments reduce the total indebtedness below the amount of insurance set forth in the policy’s Schedule A. The loan agreement and mortgage or [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) should confirm that the lien secures the indebtedness until the last dollar is repaid the lender. Some loans provide that other security secures the last dollar and the lien of the mortgage is released before all indebtedness is paid.

Although the 1970 (or revised 1984) policy version contains no limitation comparable to ¶ 9(b), many requests for last-dollar endorsements have been received on transactions insured by this older policy. Many title insurance applicants simply have this endorsement on their “laundry lists” and demand it, in an abundance of caution. Yet, if the “Last Dollar Endorsement” form used in such a transaction refers to ¶ 9(b), it will create confusion because the ALTA loan policy forms preceding the 1987 policies had no ¶ 9(b). Condition 9 in those earlier policies covered an entirely different subject. It governed the insurer’s liability where both owner’s and loan policies are issued on the property.

Condition 9(b) in the 1987–1992 policy versions also seems inconsistent with the provisions of those policies’ Condition 7(a)(ii) which defines one measure of loss in terms of “… the amount of the unpaid principal indebtedness secured by the insured mortgage. …” Condition 7(a)(ii) is derived from Condition 6(a)(iii) of the older policy forms and is intended to protect the title insurer from liability where there is no loss, but to do so without reducing the amount of insurance. It appears that Condition 9(b) was designed to protect the insurer where the lender releases part of the insured lien, but it reaches beyond that circumstance. There appears to be no situation where 9(b) offers a protection that a title insurer must have.

Recognizing the preceding issues, ALTA deleted the language of former Condition 9(b) from ALTA’s 2006 Loan Policy forms. The general subject matter of former Condition 9, “Reduction of Insurance; Reduction or Termination of Liability” is covered in Condition 10 of the 2006 standard loan policy. By omitting the language of former Condition 9(b), however, a payment on the insured mortgage under the 2006 policy does not reduce the amount of insurance. Instead, a payment on the mortgage reduces “the Indebtedness” pursuant to the policy’s definition of “Indebtedness” in Condition 1. Thus, “last dollar” endorsements should not be necessary with 2006 ALTA Loan Policies.[2](#co_footnote_I7efafd40d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7efad631d6ee11ea8f41e1f6f2aa78) | Copy reproduced at the end of this chapter at [Appendix 19G](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP19G&originatingDoc=If4f5876e6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I7efafd40d6ee11ea8f41e1f6f2aa78) | *See* Comparison of 1992 ALTA Loan Policy with 2006 ALTA Loan Policy at p. 94–95 of Appendix AA-C4 at the end of this treatise. |

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2 Title Ins. Law § 19:32 (2020 ed.)

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**Chapter 19. Title Insurance in Complex Financing Transactions**

§ 19:32. Synthetic lease transactions

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587716fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

In the 1990s, changes in accounting rules stimulated the development of “[**synthetic lease**](http://practicallawconnect.thomsonreuters.com/Document/I2e45ae6f642211e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))” transactions.[1](#co_footnote_I7f02ec81d6ee11ea8f41e1f6f2a) In such transactions, a “lessor” obtains a loan from a lender for the purpose of purchasing real property and gives back a mortgage. The lessor then leases the property to a lessee. The lessor uses the lessee’s rent payments to pay the debt service to its lender. The instrument executed by the lessor and lessee is entitled a “lease” and, for accounting purposes, the lessee’s books treat the transaction as creating a lease. Yet, the lease also contains language that generally would be used to give the “lessor” a mortgage or [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). This language is included so that the instrument can be effective as a mortgage in the event the transaction is recharacterized as a financing transaction.

The lender, “lessor,” and “lessee” each may want title insurance insuring its interest in the real property. The “lessor” wants to insure its fee simple title but also wants title insurance protection for its mortgage lien in the event that its fee simple title is recharacterized by a court or the [**IRS**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a11beef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) as a mortgage securing a loan to the “lessee.” Title insurers have responded in three ways. One method has been to insure the lessor’s fee simple title with an owner’s policy that also contains a clause covering loss resulting from the insured’s inability to enforce its lease as a mortgage lien with the priority of its recording in the event the lease is recharacterized as a mortgage.[2](#co_footnote_I7f02ec82d6ee11ea8f41e1f6f2a) A second method is to issue an owner’s policy with a clause providing that the policy will automatically convert into a loan policy with certain endorsements in the event the insured ownership interest is recharacterized as a mortgage lien.[3](#co_footnote_I7f02ec83d6ee11ea8f41e1f6f2a) A third method has been to issue both an owner’s policy and loan policy to the lessor, with a clause in each saying that the owner’s policy will be effective from date of issuance until and unless recharacterization occurs and the loan policy will be effective only if recharacterization occurs and thereafter.[4](#co_footnote_I7f02ec84d6ee11ea8f41e1f6f2a)

Whether or not the title insurance policies described in the preceding paragraph will cover the recharacterization claim itself will depend on whether the insurer adds a special exception[5](#co_footnote_I7f031390d6ee11ea8f41e1f6f2a) for such a claim or the lessor negotiates for an endorsement expressly covering a recharacterization claim. An endorsement covering loss resulting from a court’s recharacterization of a synthetic lease transaction as a mortgage or secured financing may be difficult to obtain. The following paragraph of advice to title insurers from one underwriter’s vice president illustrates title insurers’ concerns.

If the title insurance company accedes to a request by the insured to issue an endorsement insuring against loss or damage due to a court’s recharacterization of a synthetic lease transaction as a mortgage, deed of trust or other secured financing and the inability of the insured to enforce the ‘mortgage’ through a [**judicial foreclosure**](http://practicallawconnect.thomsonreuters.com/Document/I8d751095ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) proceeding or power of sale as provided in the transactional documents, the title insurer should nonetheless be careful *not* to state or imply, and should specifically exclude, coverage under the policy for loss or damage for defects, liens, encumbrances or other matters affecting title for which a claim of priority is asserted by reason of an allegation that there was or is no [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to the claimant of the insured mortgage. This limitation of coverage is necessary because it may be unclear from the record that a mortgage lien was in fact granted to the lessor and because of the danger of a “springing mortgage,” i.e., the possibility that a court may subsequently rule that the recorded lease agreement or other document in fact creates a mortgage lien, but that the lien is only effective against third parties as of the date of the court’s decision and does not relate back to the original date of recordation of the document. Furthermore, because of the risks inherent in such a transaction, the title insurer would not want to ‘insure over’ any stated or implied exclusion or exception in the policy for recharacterization (unless it has agreed to issue a specific recharacterization endorsement) or agree to provide defense costs in connection with any claim of recharacterization.[6](#co_footnote_I7f031391d6ee11ea8f41e1f6f2a)

Section 6:13 discusses whether general policy exclusions for matters created by the insured or matters created after the policy date should apply in the event the risk of recharacterization was not either expressly covered or excepted from the policy.

The lessor’s lender may want title insurance for its mortgage lien. Again, the policy might contain a special recharacterization exception or the lender might have negotiated for a recharacterization endorsement.

Additionally, the lessee may request a leasehold policy. It generally will contain a clause insuring that the lessee will have all the rights of an owner under an owner’s policy if a court recharacterizes the lessee’s interest as fee simple title.[7](#co_footnote_I7f031392d6ee11ea8f41e1f6f2a) Again, the title insurer likely will insert a recharacterization exception into the policy, unless the lessee negotiates for coverage via an endorsement.

Because there are not yet any judicial decisions to show how courts will treat synthetic lease transactions, insureds’ counsel needs to make certain title insurance coverage is adequate to protect against various possible outcomes. For example, the priority of a mortgage that results from recharacterizing the lessor’s title may depend on whether a court decides that the mortgage existed on the date the lease was recorded or did not exist until the lease was recharacterized as a mortgage.[8](#co_footnote_I7f031393d6ee11ea8f41e1f6f2a) It is not certain whether the courts will uphold a term in the documents which provides that the mortgage relates back to the date of recording of the lease.[9](#co_footnote_I7f031394d6ee11ea8f41e1f6f2a) Thus, a lessor will want title insurance on its potential mortgage lien to cover the lien’s priority as of the date the lease was recorded.

Another uncertainty is whether a court that recharacterizes a lessor’s ownership interest as an equitable mortgage will find that the [**purchase money mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) the lessor gave its lender should be treated merely as a pledge of the lessor’s equitable mortgage.[10](#co_footnote_I7f033aa0d6ee11ea8f41e1f6f2a) Reportedly, some lenders have been attempting to protect themselves by either requiring a mortgage on all the lessee’s interest under the lease documents or taking a collateral assignment of all the lessor’s interests, including any mortgage lien acquired in a recharacterization.[11](#co_footnote_I7f033aa1d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I7f02ec81d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). |
| [2](#co_fnRef_I7f02ec82d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). |
| [3](#co_fnRef_I7f02ec83d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). *See also* sample endorsement form at Murray, Recharacterization Issues—Title Insurance, in ABA, Hot Topics in Title Insurance, 273–274 (1997 ABA Video Law Seminar). |
| [4](#co_fnRef_I7f02ec84d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). *See also* Murray, Recharacterization Issues—Title Insurance, in ABA, Hot Topics in Title Insurance, 237, 273, 275 (1997 ABA VideoLaw Seminar) (reproducing sample endorsement). |
| [5](#co_fnRef_I7f031390d6ee11ea8f41e1f6f2aa78) | Language used by one title insurance underwriter to except loss resulting from a claim that a synthetic lease transaction should be recharacterized is quoted from Murray, Recharacterization Issues—Title Insurance, in ABA Real Prop. Prob. & Tr. L., Hot Topics in Title Insurance, 237, 272 (1997 ABA VideoLaw Seminar):  Any defect in, or lien or encumbrance on the title resulting from an allegation or determination that the interest of the insured as evidenced by any or all of the following documents, either jointly or severally, should be or have been recharacterized in any manner: 1.\_\_\_2.\_\_\_3.\_\_\_4.\_\_\_. |
| [6](#co_fnRef_I7f031391d6ee11ea8f41e1f6f2aa78) | Murray, Recharacterization Issues—Title Insurance, in ABA Real Prop. Prob. & Tr. L., Hot Topics in Title Insurance, 237, 255 (1997 ABA VideoLaw Seminar). |
| [7](#co_fnRef_I7f031392d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). |
| [8](#co_fnRef_I7f031393d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). |
| [9](#co_fnRef_I7f031394d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). |
| [10](#co_fnRef_I7f033aa0d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). |
| [11](#co_fnRef_I7f033aa1d6ee11ea8f41e1f6f2aa78) | Bonita, Title Insurance for Synthetic Lease Transactions, 3 American College of Real Estate Lawyers Newsletter, at 5 (July 1997). |

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2 Title Ins. Law § 19:33 (2020 ed.)

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§ 19:33. Sale/leaseback transactions

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587746fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

The means discussed in [§ 19:32](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs19%3a32&originatingDoc=If4f587746fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to assure that the insured’s real interest in land acquired in a [**synthetic lease**](http://practicallawconnect.thomsonreuters.com/Document/I2e45ae6f642211e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) transaction is adequately insured may be appropriate in the context of a sale/leaseback transaction as well. Section 6:13 discusses the applicability of general policy exclusions when the vendee’s interest acquired in a sale/leaseback transaction is insured by the title policy as a fee simple interest, but subsequently recharacterized as an equitable mortgage. Sections [14:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14%3a11&originatingDoc=If4f587746fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [14:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14%3a17&originatingDoc=If4f587746fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) consider such issues in the context of deeds in lieu of foreclosure.

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§ 19:34. Construction loans

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587776fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

This treatise discusses issues involving construction loans in §§ [5:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a10&originatingDoc=If4f587776fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:29](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a29&originatingDoc=If4f587776fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [9:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a9&originatingDoc=If4f587776fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [14:24](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs14%3a24&originatingDoc=If4f587776fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

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Appendix 19A. Letter of Credit Endorsement

LETTER OF CREDIT ENDORSEMENT

The Company acknowledges that the insured mortgage secures a reimbursement obligation of \_\_\_ for a Letter of Credit dated \_\_\_, referred to in the insured mortgage (the Letter of Credit). Notwithstanding Paragraph 8(d) of the Conditions and Stipulations of this Policy but not subject to Paragraph 7 of the Conditions and Stipulations, the liability of the Company shall be increased as sums are drawn pursuant to the terms and provisions of the Letter of Credit. Furthermore, notwithstanding Item 3(d) of the Exclusions from Coverage, this Policy insures that the lien of the insured mortgage as it secures the reimbursement obligation for sums drawn pursuant to and in accordance with the terms and provisions of the Letter of Credit after the Date of Policy shall have the same priority over liens, encumbrances and other matters as if such sums had been drawn as of the Date of Policy except for:

(1) taxes and assessments, and

(2) Liens for services, labor or materials

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Appendix 19B. Future Advance and Revolving Credit Line Endorsement

FUTURE ADVANCE AND REVOLVING CREDIT LINE ENDORSEMENT

1. The Company acknowledges that the insured mortgage identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of this Policy secures future advances of principal or a revolving credit line and provides for changes in the rate of interest calculated pursuant to a formula contained in the insured mortgage. By this endorsement, the Company insures against loss or damage which the insured sustains as a result of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provision in the insured mortgage providing for changes in the rate of interest.

b. The loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by changes in the rate of interest as provided in the insured mortgage.

c. The invalidity or unenforceability of the lien of the insured mortgage as security for future advances of principal indebtedness.

d. The invalidity, unenforceability or loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan as a result of repayments of principal indebtedness made during the term of the revolving loan.

e. The priority of any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) over the lien of the insured mortgage as security for the principal indebtedness and any future advances of principal indebtedness made after the date of this policy.

2. This endorsement is made a part of the Policy and the insurance afforded by it is subject to the (i) Exclusions from Coverage except Paragraph 3(d), (ii) the provisions of the Conditions and Stipulations except Paragraphs 8(d) and (iii) the Exceptions contained in Schedule B of the Policy. In addition, it does not insure against loss or damage resulting from:

a. Future advances of principal indebtedness made after Petition for Relief under the Bankruptcy Code (11 U.S.C.) by or on behalf of the mortgagor.

b. The loss of priority of future advances of principal indebtedness as a result of taxes, assessments, or notice of a federal tax lien filed against the mortgagor.

c. The loss of priority of future advances of principal indebtedness to mechanics or materialmen’s liens filed on account of work done or materials furnished as of Date of Policy.

d. The loss of priority of future advances of principal indebtedness to environmental protection liens.

e. The loss of priority of a future advance of principal indebtedness made after the insured has actual knowledge of the existence of liens, encumbrances or other matters affecting the insured premises described in Schedule A intervening between the date of the policy and the future advance, as to such intervening lien, encumbrance or other matter.

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**Appendices**

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+19+REF&originatingDoc=If4f587806fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Appendix 19C. Insurance of Future Advances and Letter of Credit Reimbursement Obligations

INSURANCE OF FUTURE ADVANCES AND LETTER OF CREDIT REIMBURSEMENT OBLIGATIONS

1. The Company acknowledges that the insured mortgage identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of this policy secures future advances of principal, including future advances made after the repayment of principal, and letter of credit Reimbursement Obligations (as that term is defined in the [**Credit Agreement**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0351eef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))). By this endorsement, the Company insures against loss or damage which the Insured sustains as a result of:

a. The invalidity or unenforceability of the lien of the insured mortgage as security for future advances of principal indebtedness and the Reimbursement Obligations.

b. The invalidity, unenforceability or loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan as a result of repayments of principal indebtedness made during the term of the loan.

c. The priority of any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) over the lien of the insured mortgage as security for the principal indebtedness advanced after the date of this policy and for any letter of credit issued after the date of this policy.

2. This endorsement is made a part of the policy and the insurance afforded by it is subject to the: (i) Exclusions from Coverage, except paragraph 3(d); the provisions of the Conditions and Stipulations, except sections 8(a) and 8(b); and the Exceptions contained in Schedule B of the policy. In addition, it does not insure against loss or damage resulting from:

a. Future advances of principal indebtedness or letters of credit issued after a petition for relief under the Bankruptcy Code (11 U.S.C.) by or on behalf of the mortgagor.

b. The loss of priority of future advances or letters of credit as a result of taxes or assessments due or payable after the Date of Policy.

c. The loss of priority of any future advance or letter of credit made or issued more than 45 days after notice of a federal tax lien filed against the mortgagor.

d. The loss of priority for a future advance or the reimbursement obligation for a letter of credit if the advance is made, or the letter of credit is issued, after the insured has actual knowledge of the existence of liens, encumbrances or other matters affecting the title to the land, intervening between the Date of Policy and that future advance or letter of credit, but only as to such intervening lien, encumbrance or other matter. The insurance of the priority of any future advance made, or letter of credit issued, before the insured has actual knowledge of such intervening lien, encumbrance or other matter, will not be affected by this paragraph.

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2 Title Ins. Law Appendix 19D (2020 ed.)

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Appendix 19D. Guaranty Endorsement

GUARANTY ENDORSEMENT

This policy insures the validity, enforceability and priority of the lien of the insured mortgage as it secures the obligations of [*Guarantor*] under a Guaranty Agreement dated \_\_\_, which obligations guarantee the repayment to the insured of the principal indebtedness and payment of interest at rates which vary as provided in a promissory note in the amount of \_\_\_$. of [*Borrower*]. This policy also insures against the invalidity, unenforceability or loss of priority of the lien of the insured mortgage as the result of changes in the rate of interest in the promissory notes underlying the Guaranty Agreement.

This policy does not insure against any loss or damage on account of the fact that, under the Federal Bankruptcy Code or other similar state insolvency or creditors’ rights laws:

(i) the insured mortgage securing the guaranty agreement is attacked either on the ground that such mortgage is a [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or

(ii) on the ground that the claim or lien of such mortgage should be subordinated to other claims or interests.

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Appendix 19E. Guaranty of a Revolving Credit Loan Endorsement

GUARANTY OF A [**REVOLVING CREDIT LOAN**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d929eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) ENDORSEMENT

The Company acknowledges that the insured mortgage secures a guaranty of a term loan and a line of credit evidenced and governed by a [**Credit Agreement**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0351eef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) dated \_\_\_ referred to in the insured mortgage (defined in this endorsement as the “Credit Line”). Notwithstanding paragraph 8(d) of the Conditions and Stipulations of this Policy, but subject to paragraph 7 of the Conditions and Stipulations, the amount of liability of the Company under the above numbered policy shall fluctuate to equal the outstanding principal indebtedness and interest, not exceeding the Amount of Insurance, secured by the insured mortgage as sums are advanced, readvanced, paid and repaid pursuant to the terms and provisions of the Credit Line. The liability of the Company under this policy will not be reduced under Paragraph 9(b) of the Conditions and Stipulations as the result of payments on the indebtedness secured by the insured mortgage, except to the extent provided in paragraph 7 of the Conditions and Stipulations. Furthermore, notwithstanding item 3(d) of the Exclusions from Coverage, this Policy insures that the lien of the insured mortgage as it secures sums advanced and readvanced pursuant to and in accordance with the terms and provisions of the Credit Line after the Date of Policy shall have the same priority over liens, encumbrances and other matters as if such advances had been made as of the original Date of Policy, except for:

(1) Taxes and assessments;

(2) Federal tax liens, notice of which is filed prior to the date of such advances;

(3) Liens or charges created under any environmental protection laws, ordinances or regulations; or

(4) Liens, encumbrances or other matters, the existence of which are actually known to the Insured prior to the date of such advances.

[(5) Any [**Statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for services, labor or material. { *This provision, or a version adapted to the law of a particular state, should be added where state law does not fully protect the priority of advances made under the insured mortgage against mechanics’ liens*} ].

Provided, however, this endorsement is subject to the Exclusions from Coverage, the exceptions in Schedule B of the Policy and does not insure the validity, enforceability or priority of the lien of the insured mortgage with respect to any sums advanced after the filing of a petition for relief under the Bankruptcy Code, 11 U.S.C.A., by, on behalf of or with respect to the mortgagor.

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Appendix 19F. Swap Endorsement

[**SWAP**](http://practicallawconnect.thomsonreuters.com/Document/I03f4da79eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) ENDORSEMENT

The Company insures that the lien of the mortgage described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of this policy secures all sums due under that certain Interest Rate Exchange provided for in the insured mortgage and the [**Credit Agreement**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0351eef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) between [*borrower swap counterparty (mortgagor)* and [*bank swap counterparty (mortgagee)*] dated \_\_\_, \_\_\_. In the event the obligations of Mortgagor under the Interest Rate Exchange Agreement are not secured by the mortgage, the coverage afforded by this endorsement is in addition to and not included in the amount stated in Schedule A of this policy. The liability of the Company under this endorsement shall not exceed the amount of $[*enter amount of insurance required by the insured for this coverage, extra premium must be collected for this amount*].

This endorsement does not insure:

1. The priority of the lien of the insured mortgage to secure amounts due under the Interest Rate Exchange Agreement;

2. Nothing in this endorsement shall be construed as insuring against loss or damage sustained or incurred by reason of the laws relating to usury, bankruptcy, unconscionability or unreasonableness.

3. Nothing in this endorsement shall be construed as insuring a determination by a court of competent jurisdiction of the amount due the insured, but it does insure that the amount determined by a court of competent jurisdiction is secured by the insured mortgage.

[4. That the mortgage or intangible taxes based on the amount of principal indebtedness secured by the mortgage, which were paid when the mortgage was recorded, are sufficient].

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Appendix 19G. First Loss Endorsement

FIRST LOSS ENDORSEMENT

In the event a defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or other matter insured against by this Policy creates a loss or a series of losses which exceed in the aggregate ten percent (10%) of the amount of insurance shown in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of this Policy, the amount which the Company shall be liable to pay shall be determined without requiring [**maturity**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a13a7ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the entire indebtedness by acceleration or otherwise, and without requiring the insured to pursue its remedies against any properties which secure the indebtedness other than the premises described in Schedule A. Provided, however, that nothing in this endorsement shall affect or impair the Company’s right of subrogation with respect to the insured premises.

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Appendix 19H. Last Dollar Endorsement

LAST DOLLAR ENDORSEMENT

The liability of the Company under this policy will not be reduced under Paragraph 9(b) of the Conditions and Stipulations as the result of payments on the indebtedness secured by the insured mortgage, except to the extent such payments reduce the total indebtedness secured by the insured mortgage below the Amount of Insurance stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

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2 Title Ins. Law § 20:1 (2020 ed.)

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**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I7f72c550d6ee11ea8f41e1f6f2a)**

§ 20:1. Introduction

As explained in Chapters 1, 2, 12, and 13 of this treatise, title insurance is sold primarily by local agents for national underwriters. The agents may be local branches of national title insurance underwriters or they may be independent abstract companies or attorneys who contract to act as agents for national title insurance underwriters.

Besides issuing title insurance policies, in most states today, the local title insurance agent performs other roles, including serving as escrow and closing agent for real estate transactions.[1](#co_footnote_I7f72c551d6ee11ea8f41e1f6f2a) By assuming these roles, the local title insurance agent assumes both the duty to perform them competently and liability for failure to do so.

In certain circumstances explored in this chapter, the title insurance underwriter also may be liable for its agents’ acts. Title insurance agents’ assumption of additional roles increases the extent to which the written policy no longer determines the scope of the title insurance underwriter’s potential liability.[2](#co_footnote_I7f72c552d6ee11ea8f41e1f6f2a) Additionally, title insurance underwriters often expressly assume liability for certain of their agents’ actions in handling escrows and closings via Closing Protection Letters, examined at §§ [20:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a15&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

This chapter considers the duties that title insurance agents owe and the liabilities that they and their underwriters assume when the title insurance agent also serves as escrow and/or closing agent in real estate transactions. [Sections 21:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a1&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) cover the disclosure requirements and referral fee limitations that the Real Estate Settlement Procedure Act imposes on the providers of real estate settlement services. [Sections 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) examine a title insurance agent’s role as title examiner. Whether a title insurance company may be liable for the unauthorized practice of law for examining titles, drafting instruments of conveyance, and closing real estate transactions is discussed in [§§ 13:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a1&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

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| **Footnotes** | |
| [\*](#co_fnRef_I7f72c550d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I7f72c551d6ee11ea8f41e1f6f2aa78) | *See, generally,* [Reich v. Chicago Title Ins. Co., 853 F. Supp. 1325, 2 Wage & Hour Cas. 2d (BNA) 150, 128 Lab. Cas. (CCH) P 33101 (D. Kan. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994123851&pubNum=0000345&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (describing generally Kansas City escrow practice); [Williams v. Land Title Co. of Dallas, 1997 WL 196345, \*3 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (under [Tex. R. App. P. 47.7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1005293&cite=TXRRAPR47.7&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), unpublished opinions may not be cited as authority) (describing Texas escrow practice). |
| [2](#co_fnRef_I7f72c552d6ee11ea8f41e1f6f2aa78) | *See* Watanabe, Liability on Non-Policy Theories: The Risks that an Underwritten Title Company and Title Insurance Company Undertake in Performing Clerical, Ministerial or Escrow Services and New Theories of Liability, Prac. L. Inst./Real 665, 696 (1995). *See also* Boyette, [Title Insurance Liability Beyond the Policy, 69 Fla. B.J. 24 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0105468725&pubNum=0001140&originatingDoc=If4f5ae716fac11d98776f22b20adbd85&refType=LR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:2 (2020 ed.)

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**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I7f7d73b0d6ee11ea8f41e1f6f2a)**

§ 20:2. Title companies’ duties as escrow and closing agents

The role of an escrow or closing agent will vary somewhat depending on where in the United States the real estate transaction occurs.[1](#co_footnote_I7f7d9ac0d6ee11ea8f41e1f6f2a) Escrow services typically include accepting funds and documents from the parties to the transaction and holding them for delivery to the proper parties when stated conditions have occurred.[2](#co_footnote_I7f7d9ac1d6ee11ea8f41e1f6f2a) An escrow is deemed to arise upon acceptance of documents or funds to be held for delivery upon stated conditions.[3](#co_footnote_I7f7d9ac2d6ee11ea8f41e1f6f2a)

Besides managing the escrow of funds and documents, title insurance agents in most parts of the United States perform additional closing services. These include charging all taxes and fees against the property that are to be paid at closing;[4](#co_footnote_I7f7e3700d6ee11ea8f41e1f6f2a) preparing the instruments of conveyance called for in the purchase contract and other documents required to complete the transaction;[5](#co_footnote_I7f7e3701d6ee11ea8f41e1f6f2a) supervising the parties’ execution of documents; presiding over the transfer of documents and funds;[6](#co_footnote_I7f7e3703d6ee11ea8f41e1f6f2a) and recording title documents. In some states, allegations of the unauthorized practice of law limit the closing services that title insurance companies can provide to clerical tasks like filling in the blanks of a closing statement or standard-form deed. See [§§ 13:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a1&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) identifying states where title insurance companies are prohibited from supervising closings or preparing mortgages and instruments of conveyance on the basis that these acts are the unauthorized practice of law.

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| **Footnotes** | |
| [\*](#co_fnRef_I7f7d73b0d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I7f7d9ac0d6ee11ea8f41e1f6f2aa78) | *See, generally,* [Reich v. Chicago Title Ins. Co., 853 F. Supp. 1325, 2 Wage & Hour Cas. 2d (BNA) 150, 128 Lab. Cas. (CCH) P 33101 (D. Kan. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994123851&pubNum=0000345&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (describing generally Kansas City escrow practice); [TRW Title Ins. Co. v. Security Union Title Ins. Co., 1994 WL 194262 (N.D. Ill. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994112489&pubNum=0000999&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [153 F.3d 822 (7th Cir. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998182902&pubNum=0000506&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Williams v. Land Title Co. of Dallas, 1997 WL 196345, \*3 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication) (describing Texas escrow practice). |
| [2](#co_fnRef_I7f7d9ac1d6ee11ea8f41e1f6f2aa78) | [Fidelity National Title Company v. First American Title Insurance Company, 310 P.3d 272, 2013 COA 80, 2013 WL 2286947 (Colo. App. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030609193&pubNum=0004645&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [Palomar, Title Insurance Law § 20:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=0152721&cite=TITLEINSLs20%3a2&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I7f7d9ac2d6ee11ea8f41e1f6f2aa78) | *See* [Lechner v. Halling, 35 Wash. 2d 903, 216 P.2d 179, 185 (1950)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1950103243&pubNum=0000661&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_185&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_185). *See also* [Home Loan Corp. v. Texas American Title Co., 191 S.W.3d 728, 731 (Tex. App. Houston 14th Dist. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2009070170&pubNum=0004644&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4644_731&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4644_731); Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988); [Coast Sec. Mortg. Corp. v. Real Estate Agency, 331 Or. 348, 15 P.3d 29 (2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000637898&pubNum=0004645&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (mortgage broker who explained escrow documents to the parties and notarized them was not “acting in the capacity of an escrow agent”); [Lewis v. Shawnee State Bank of Shawnee, 226 Kan. 41, 596 P.2d 116 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979124434&pubNum=0000661&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Williams v. Land Title Co. of Dallas, 1997 WL 196345, \*3 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication) (holding that an escrow agent did not breach a duty to close the transaction because a commercial loan worksheet containing the terms of a proposed loan did not constitute a valid escrow agreement); Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988) (“An escrow is defined … as a deed or other instrument deposited by the obligor or his agent, with a third person, who is not a party to the escrow agreement, to be held by the depository for delivery to the obligee until the performance of a condition or the happening of a certain event and then to be delivered to take effect.”). |
| [4](#co_fnRef_I7f7e3700d6ee11ea8f41e1f6f2aa78) | *See, generally*, [NYCTL 1996-1 Trust v. Malihan, 276 A.D.2d 443, 715 N.Y.S.2d 51 (1st Dep’t 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000596181&pubNum=0000602&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Farkas v. Chicago Title Ins. Co., 71 Ohio App. 3d 633, 594 N.E.2d 1140 (8th Dist. Cuyahoga County 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992075228&pubNum=0000578&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding title insurance agent liable for error in prorating taxes). |
| [5](#co_fnRef_I7f7e3701d6ee11ea8f41e1f6f2aa78) | *See infra* [§ 20:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a9&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and cases cited therein. |
| [6](#co_fnRef_I7f7e3703d6ee11ea8f41e1f6f2aa78) | *See generally* [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*3 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“escrow agent owes a fiduciary duty ‘both to the party making the deposit and the party for whose benefit it is made’”); [Carter Development of Massachusetts, LLC v. Howard, 285 So. 3d 367 (Fla. 1st DCA 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049698346&pubNum=0003926&originatingDoc=If4f5ae746fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I7fb06a90d6ee11ea8f41e1f6f2a)**

§ 20:3. Title companies’ duties as escrow and closing agents—General duties

An escrow or closing agent owes a contractual duty to each party to the escrow agreement.[1](#co_footnote_I7fb06a91d6ee11ea8f41e1f6f2a) Additionally, the common law in many jurisdictions considers an escrow or closing agent to be the agent of all parties to the real estate transaction and to bear a fiduciary relationship to each party.[2](#co_footnote_I7fb06a92d6ee11ea8f41e1f6f2a)

Common law fiduciary duties of an escrow or closing agent include (i) complying with the instructions of the principals; and (ii) exercising ordinary skill and diligence in the agent’s employment.[3](#co_footnote_I7fb091a0d6ee11ea8f41e1f6f2a) Therefore, upon accepting a purchase contract for escrow or closing, most jurisdictions hold that a title company assumes a duty to follow all explicit and implied instructions for escrow and closing, and to perform all services undertaken with the skill and diligence reasonably expected of a real estate professional. These general duties apply to all the particular tasks the escrow or closing agent agrees to perform. An escrow or closing agent will be liable in contract for breaching any escrow or closing instructions.[4](#co_footnote_I7fb0b8b0d6ee11ea8f41e1f6f2a)

Many jurisdictions have held that an escrow or closing agent who acts negligently in performing the escrow agreement or closing instructions also may be liable in tort for loss proximately occasioned by such negligence.[5](#co_footnote_I7fb0b8b1d6ee11ea8f41e1f6f2a) Separate causes of action for negligence based on failure to exercise reasonable care and for negligent misrepresentation may be pled in the same case so long as based on different facts.[6](#co_footnote_I7fb2db90d6ee11ea8f41e1f6f2a) Additionally, in a tort action, when an agent is working for two principals who are aware of the dual agency, neither principal can be held liable by the other for the agent’s actions unless said principal participated in the agent’s wrong.[7](#co_footnote_I7fb43b20d6ee11ea8f41e1f6f2a)

A modern trend in some jurisdictions, however, bars a cause of action in tort for breach of a closing instruction contract under the “economic loss rule” and limits claims for failure to exercise reasonable care in performing a contract to actions on the contract.[8](#co_footnote_I7fb46230d6ee11ea8f41e1f6f2a)

A valid underlying contract is required to support an escrow agreement.[9](#co_footnote_I7fb46231d6ee11ea8f41e1f6f2a) The parties to the escrow must have agreed on the terms that govern the escrow holder’s delivery of the deposited items.[10](#co_footnote_I7fb46232d6ee11ea8f41e1f6f2a) The escrow agreement between the parties must be clear and definite.[11](#co_footnote_I7fb46233d6ee11ea8f41e1f6f2a) The parties to an escrow often give the depositary specific written instructions setting forth the terms for the escrow arrangement.[12](#co_footnote_I7fb48940d6ee11ea8f41e1f6f2a)

The “requirements” a Commitment for title insurance lists to be met before a real estate transaction may be closed constitute written escrow instructions.[13](#co_footnote_I7fb48941d6ee11ea8f41e1f6f2a) Nevertheless, escrow instructions may be oral,[14](#co_footnote_I7fb48942d6ee11ea8f41e1f6f2a) though oral instructions will not be permitted to modify written instructions.[15](#co_footnote_I7fb48943d6ee11ea8f41e1f6f2a) Instructions also may be implied from the express instructions given to the escrow holder.[16](#co_footnote_I7fb48944d6ee11ea8f41e1f6f2a)

Courts generally require strict compliance with escrow and closing instructions.[17](#co_footnote_I7fb4b050d6ee11ea8f41e1f6f2a) Any change to the terms of the escrow after deposit with the escrow holder must be approved by all principals to the escrow.[18](#co_footnote_I7fb4b051d6ee11ea8f41e1f6f2a) Once deposited in escrow, an instrument passes beyond the control of the depositor and the depositor may not recall it.[19](#co_footnote_I7fb4b052d6ee11ea8f41e1f6f2a) Unless all parties agree to modify escrow instructions, the escrowee must implement the original instructions received, even if one party directs the escrowee otherwise.[20](#co_footnote_I7fb4b053d6ee11ea8f41e1f6f2a) An oral inquiry as to the status of the escrow does not constitute an amendment to the escrow instructions.[21](#co_footnote_I7fb4d760d6ee11ea8f41e1f6f2a)

Upon performance of the conditions set forth in the escrow agreement, the escrow holder must deliver the deposited items in accordance with the escrow instructions.[22](#co_footnote_I7fb4d761d6ee11ea8f41e1f6f2a) If an escrow agent is unsure of its instructions, it is obligated to seek clarification of such instructions before proceeding.[23](#co_footnote_I7fb4d762d6ee11ea8f41e1f6f2a) Thus, where escrow instructions were silent as to the terms of a first [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to which the seller agreed to subordinate the purchaser’s purchase-money deed of trust, the title company could be liable for closing the transfer without first determining the seller’s intentions.[24](#co_footnote_I7fb6d330d6ee11ea8f41e1f6f2a)

A failure to do something not required by the instructions is not a breach of the escrow agreement or a breach of contract.[25](#co_footnote_I7fb6d331d6ee11ea8f41e1f6f2a) The California Court of Appeals held that “no liability attaches to the escrow holder for his failure to do something not required by the terms of the escrow or for a loss incurred while obediently following his escrow instructions.”[26](#co_footnote_I7fb6d332d6ee11ea8f41e1f6f2a) This should not be taken to mean, however, that a title company serving as escrow and closing agent has no duty to take the initiative to inform parties of facts material to the transaction or to act in compliance with common real estate practices when the parties reasonably rely on the company’s having assumed the role of real estate professional for the transaction. A title company agreeing to act as closing agent may be liable for failing to exercise ordinary skill and care in any aspect of managing the closing of the transaction, including, but not limited to, drafting instruments of conveyance, supervising the execution of instruments, supervising the transfer of documents and funds, and recording title documents.[27](#co_footnote_I7fb6fa40d6ee11ea8f41e1f6f2a)

The title company also must be able to identify a situation beyond its expertise and advise the seller or buyer when they should consult an independent attorney.[28](#co_footnote_I7fb6fa41d6ee11ea8f41e1f6f2a) If the title company proceeds with a complex transaction, it assumes the duty to exercise the skill and care of a real estate professional able to manage such a transaction.[29](#co_footnote_I7fb6fa42d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I7fb06a90d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I7fb06a91d6ee11ea8f41e1f6f2aa78) | [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*3 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. First American Title Ins. Co., Slip Opinion No. 149599 at p. 23, 2016 WL 1453254 (Mich. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Plaza Home Mortg., Inc. v. North American Title Co., Inc., 184 Cal. App. 4th 130, 139, 109 Cal. Rptr. 3d 9 (4th Dist. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021845303&pubNum=0007047&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (indicating that the lender and the closing agent “had a direct contractual relationship arising from the closing instructions”); [Federal Deposit Ins. Corp. v. U.S. Titles, Inc., 939 F. Supp. 2d 30, 38-40 (D.D.C. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030368950&pubNum=0004637&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_38&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_38) (recognizing that violation of closing instructions can lead to a viable breach of contract claim); [F.D.I.C. v. Floridian Title Group Inc., 972 F. Supp. 2d 1289, 1295 (S.D. Fla. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031590173&pubNum=0004637&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1295&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1295) (concluding that the FDIC presented evidence that the closing instructions constituted a contract). |
| [2](#co_fnRef_I7fb06a92d6ee11ea8f41e1f6f2aa78) | *See* [West Knoxville Associates Ltd. Partnership v. Ticor Title Ins. Co., 124 F.3d 201 (6th Cir. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997186685&pubNum=0000506&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“An escrow holder occupies a fiduciary relationship with both the parties to the escrow agreement, and has attendant duties of loyalty, disclosure, and care, but the particular tasks with which the escrow holder is charged are those set forth in the escrow agreement.”); [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*3 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“By assuming the status of fiduciary, the fiduciary assumes a heightened responsibility to protect the beneficiary’s interests and is therefore wholly responsible for any losses caused by any breach of its fiduciary duty.”); [Red Lobster Inns of America, Inc. v. Lawyers Title Ins. Corp., 492 F. Supp. 933, 941 (E.D. Ark. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980119400&pubNum=0000345&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_941&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_941), aff’d in part, rev’d in part on other grounds, [656 F.2d 381 (8th Cir. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981136111&pubNum=0000350&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mansur v. Security Search & Abstract Co. of Philadelphia, 1995 WL 365401 (E.D. Pa. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995132446&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [Orlando Millenia, LC v. United Title Services of Utah, Inc., 2015 UT 55, 355 P.3d 965, 971 (Utah 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036719496&pubNum=0004645&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_971&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_971); [Rivermont Village, Inc. v. Preferred Land Title, Inc., 371 S.W.3d 858 (Mo. Ct. App. S.D. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027688098&pubNum=0004644&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), reh’g and/or transfer denied, (June 5, 2012) and transfer denied, (Aug. 14, 2012); [Splash Design, Inc. v. Lee, 103 Wash. App. 1036, 2000 WL 1772519 (Div. 1 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000631067&pubNum=0000800&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unpublished) (finding the escrowee breached his duty “to represent both buyer and seller neutrally” when he unilaterally stopped payment on the seller’s check after uncertainty arose about the status of certain liens); Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988) (“Generally, the depositary is the agent or trustee of both parties…. It is the depository’s duty to exercise ordinary skill and diligence, and due or reasonable care in his employment. In his fiduciary capacity, he must conduct the affairs with which he is entrusted with scrupulous honesty, skill and diligence.”); [Tucson Title Ins. Co. v. D’Ascoli, 94 Ariz. 230, 383 P.2d 119, 122 (1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963124104&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_122&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_122); [Claussen v. First America Title Guaranty Co., 186 Cal. App. 3d 429, 230 Cal. Rptr. 749, 752 (6th Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986151083&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_752&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_752); [Kirby v. Palos Verdes Escrow Co., 183 Cal. App. 3d 57, 64, 227 Cal. Rptr. 785, 1 U.C.C. Rep. Serv. 2d 1386 (1st Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986134730&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (disapproved of on other grounds by, [Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co., 27 Cal. 4th 705, 27 Cal. 4th 1160a, 117 Cal. Rptr. 2d 541, 41 P.3d 548 (2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002166822&pubNum=0004645&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) (stating that an “escrow holder is the limited agent and fiduciary of all parties to an escrow”); [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 457 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_457&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_457); [Spaziani v. Millar, 215 Cal. App. 2d 667, 30 Cal. Rptr. 658, 666 (4th Dist. 1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963109600&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_666&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_666); [Southern Cross Lumber & Millwork Co. v. Becker, 761 S.W.2d 269, 272 (Mo. Ct. App. E.D. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988153369&pubNum=0000713&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_272&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_272); [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 774 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_774&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_774); [Williams v. Land Title Co. of Dallas, 1997 WL 196345, \*3 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication); [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 694 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_694&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_694), writ denied, (Nov. 14, 1990).  *Contra* [Contawe v. Crescent Heights of America, Inc., 2004 WL 2244538 (E.D. Pa. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005239835&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [In re Johnson, 292 B.R. 821 (Bankr. E.D. Pa. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003360192&pubNum=0000164&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Pennsylvania does not automatically recognize a fiduciary relationship between the closing agent and borrower in a loan transaction without a showing that the closing agent established a special relation of trust with the borrower.).  *Compare* [Donell v. Fidelity Nat. Title Agency of Nevada, Inc., 2012 WL 1669421, \*7 (D. Nev. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027685176&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that escrow agent’s duty is to the entity that is a party to the transaction, not to individual investors in the entity); [Szelc v. Stanger, 2011 WL 1467187 (D.N.J. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025093334&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (granting summary judgment for title insurer where no evidence suggested that plaintiff had placed trust in or interacted with title insurer during the transaction); [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158 (N.D. Ohio 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in which the court stated that Ohio has not recognized a general fiduciary duty between a title insurance company and a borrower, so that a complaint must allege existence of an agency relationship or a relationship involving special trust and confidence. The court did not decide that the relationship of escrow or closing agent is insufficient to create a fiduciary duty, since the borrower’s complaint failed to state whether the title company served in that role or merely issued a policy.  *Compare also* [Carter Development of Massachusetts, LLC v. Howard, 285 So. 3d 367 (Fla. 1st DCA 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049698346&pubNum=0003926&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (purchaser had no claims against escrowee because escrow instructions were given solely by property owner and developer); [A Good Time Rental, LLC v. First American Title Agency, Inc., 259 P.3d 534 (Colo. App. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025478587&pubNum=0004645&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that even if in a commercial setting a fiduciary-type relationship exists between a closing agent and a client, a fiduciary duty between contracting parties does not trump the economic loss rule and give a right to sue in tort for breach of a duty in the contract); [First Franklin Financial Corp. v. United Title Co., Inc., 2009 WL 3698526 (D. Colo. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020326104&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unpublished) (stating rule in *dicta*, but holding that, as between commercial parties, where tort action alleges nothing more than breach of contractual terms, the economic loss rule “bars the tort action, regardless of what additional independent fiduciary duties closing agents may owe under different circumstances”); and [White v. Brock, 41 Colo. App. 156, 161, 584 P.2d 1224, 1228 (App. 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978130855&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1228&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1228). |
| [3](#co_fnRef_I7fb091a0d6ee11ea8f41e1f6f2aa78) | *See* cases cited *supra. See also* [Donell v. Fidelity Nat. Title Agency of Nevada, Inc., 2012 WL 1669421, \*4 (D. Nev. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027685176&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Orlando Millenia, LC v. United Title Services of Utah, Inc., 2015 UT 55, 355 P.3d 965, 971 (Utah 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036719496&pubNum=0004645&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_971&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_971); [Executive Management, Ltd. v. Ticor Title Ins. Co., 114 Nev. 823, 963 P.2d 465 (1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998184132&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Webster v. USLife Title Co., 123 Ariz. 130, 598 P.2d 108, 111 (Ct. App. Div. 1 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979125082&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_111&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_111) (An “escrow agent is a trustee of funds deposited in escrow and must be guided in its duty by what the escrow agreement says and act strictly in accordance with the escrow instructions”); [Southern Cross Lumber & Millwork Co. v. Becker, 761 S.W.2d 269, 272 (Mo. Ct. App. E.D. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988153369&pubNum=0000713&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_272&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_272); [Bescor, Inc. v. Chicago Title & Trust Co., 113 Ill. App. 3d 65, 68 Ill. Dec. 812, 446 N.E.2d 1209 (1st Dist. 1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983109734&pubNum=0000578&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Williams v. Land Title Co. of Dallas, 1997 WL 196345, \*3 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication) (“An escrow agent has the duty to follow the agreed terms of the underlying contract and the absolute duty to carry out the terms of the agreement creating the escrow agency.”); [Rianda v. San Benito Title Guarantee Co., 35 Cal. 2d 170, 217 P.2d 25 (1950)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1950113397&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (stating that an escrow agent must follow the instructions of principals and carry out its duties with “reasonable skill and ordinary diligence”). |
| [4](#co_fnRef_I7fb0b8b0d6ee11ea8f41e1f6f2aa78) | *See generally* [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*2 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Illinois courts regard ‘breach of fiduciary duty as controlled by the substantive laws of agency, contract, and equity’”); [Wolinsky v. Kadison, 2013 IL App (1st) 111186, 370 Ill. Dec. 205, 987 N.E.2d 971, 991 (App. Ct. 1st Dist. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030259679&pubNum=0000578&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_578_991&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_578_991). *Compare* [SASA Investment Holdings, LLC v. Chhatrala, 2020 WL 819016 (S.D. Cal. 2020)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2050394203&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (recognizing duty of an escrow holder to comply strictly with instructions of its principal, but finding that wire transfer instructions were not escrow instructions). |
| [5](#co_fnRef_I7fb0b8b1d6ee11ea8f41e1f6f2aa78) | *See e.g.,* [F.D.I.C. v. Chicago Title Ins. Co., 2013 WL 791318 (N.D. Ill. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029980389&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (recognizing both a cause of action for negligent failure to follow closing instructions and failing to exercise reasonable care when performing closings and a cause of action for negligent misrepresentation for providing misleading information, failing to disclose material information, and omitting material information to induce the Insured to fund loans); [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 694 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_694&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_694), writ denied, (Nov. 14, 1990). According to the purchase contract, real estate agents who arranged for the sale of 48 lots were to receive “free and clear” title to Lot 80 in lieu of a cash commission. The purchaser’s lender informed the local title company that the purchaser’s promissory note was to be secured by a deed of trust covering all 48 lots. The title company closed the sale in accordance with the information given by the lender. After closing, the purchaser conveyed Lot 80 to the real estate agents, but Lot 80 was subject to the lender’s newly created lien. In holding the title company liable, the Zimmerman court stated:  The title company disregarded [the] instructions of the contracting parties and without disclosure to anyone created a lien on lot 80 in favor of the Lindale Bank. That was a significant alteration of an important provision of the agreement, and a breach, not only of the title company’s duty to [the agents], but also of its duty to the buyer and seller “to exercise due care to carry out the terms of the agreement.”  [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 695 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_695&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_695), writ denied, (Nov. 14, 1990). *See also* [TierOne Bank v. U.S. Money Source, Inc., 2007 WL 2904187 (D. Neb. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013462630&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding mortgage originator liable to warehouse lender under breach of contract, negligent misrepresentation, and common-law negligence for: (1) submitting funding requests with representations and covenants containing false and inaccurate information; (2) failing to ensure a valid first lien on the real estate for which the loans were made; and (3) failing to supply eligible notes and sell the loans to third-party investors).  *See also* [Kirk Corp. v. First American Title Co., 220 Cal. App. 3d 785, 270 Cal. Rptr. 24 (3d Dist. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990086684&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) [citations omitted]; Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988) (stating “[i]t is the depositary’s duty to exercise ordinary skill and diligence and due or reasonable care in his employment. In his fiduciary capacity, he must conduct the affairs with which he is entrusted with scrupulous honesty, skill and diligence”); [Tucson Title Ins. Co. v. D’Ascoli, 94 Ariz. 230, 383 P.2d 119 (1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963124104&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Amen v. Merced County Title Co., 58 Cal. 2d 528, 25 Cal. Rptr. 65, 375 P.2d 33, 35 (1962)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1962110405&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_35&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_35); [Zang v. Northwestern Title Co., 135 Cal. App. 3d 159, 185 Cal. Rptr. 176, 180 (1st Dist. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982137292&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_180&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_180); [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 457–458 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_457&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_457); [Axley v. Transamerica Title Ins. Co., 88 Cal. App. 3d 1, 151 Cal. Rptr. 570, 574 (4th Dist. 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979146621&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_574&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_574), citing [Lee v. Title Ins. & Trust Co., 264 Cal. App. 2d 160, 162, 70 Cal. Rptr. 378 (5th Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111895&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Banville v. Schmidt, 37 Cal. App. 3d 92, 112 Cal. Rptr. 126, 135 (3d Dist. 1974)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1974103676&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_135&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_135); [Wade v. Lake County Title Co., 6 Cal. App. 3d 824, 86 Cal. Rptr. 182, 184 (1st Dist. 1970)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1970111521&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_184&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_184); [National Bank of Washington v. Equity Investors, 81 Wash. 2d 886, 506 P.2d 20, 35 (1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973122063&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_35&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_35); [Styrk v. Cornerstone Investments, Inc., 61 Wash. App. 463, 810 P.2d 1366 (Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991100767&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ruth v. Lytton Sav. & Loan Ass’n of Northern Cal., 266 Cal. App. 2d 831, 72 Cal. Rptr. 521 (1st Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968112226&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), opinion corrected, [272 Cal. App. 2d 24, 76 Cal. Rptr. 926 (1st Dist. 1969)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1969112025&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and (disapproved of on other grounds by, [Hatch v. Collins, 225 Cal. App. 3d 1104, 275 Cal. Rptr. 476 (1st Dist. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990170381&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) (holding the title company liable for breach of contract where the company recorded plaintiff’s deed of trust in violation of escrow instructions conditioning the subordination of plaintiff’s lien to a construction loan and failed to inform plaintiff prior to closing that the interest rate for the loan did not comply with the interest rate required by the escrow instructions). *See also* Jacobsen, Comment, California Escrow Agents: A Duty to Disclose Known Fraud? 17 Pac. L. J. 309, 315 (1985). |
| [6](#co_fnRef_I7fb2db90d6ee11ea8f41e1f6f2aa78) | [F.D.I.C. v. Chicago Title Ins. Co., 2013 WL 791318 (N.D. Ill. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029980389&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I7fb43b20d6ee11ea8f41e1f6f2aa78) | [James B. Nutter & Company v. Old Republic National Title Insurance Company, 2016 WL 5792686, \*4 (N.D. Ga. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039912546&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [8](#co_fnRef_I7fb46230d6ee11ea8f41e1f6f2aa78) | *See* [A Good Time Rental, LLC v. First American Title Agency, Inc., 2011 WL 2308582, \*5 (Colo. App. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025478587&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [First Franklin Financial Corp. v. United Title Co., Inc., 2009 WL 3698526 (D. Colo. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020326104&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unpublished) (as between commercial parties, where tort action alleges nothing more than breach of contractual terms, “the economic loss rule as applied by the Colorado Supreme Court bars the tort action, regardless of what additional independent fiduciary duties closing agents may owe under different circumstances”); [Lehman Bros. Holdings, Inc. v. Hirota, 2007 WL 1471690 (M.D. Fla. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012299274&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *But see* [TierOne Bank v. U.S. Money Source, Inc., 2007 WL 2904187 (D. Neb. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013462630&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  The “economic loss rule” does not eliminate tort claims by one contracting party against the other based upon torts arising from the contractual setting, however, if the complaining party can show that the tort is independent of the breach of contract. [Chicago Title Ins. Co. v. Commonwealth Forest Investments, Inc., 494 F. Supp. 2d 1332 (M.D. Fla. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012596445&pubNum=0004637&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lehman Bros. Holdings, Inc. v. Hirota, 2007 WL 1471690 (M.D. Fla. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012299274&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that lender’s allegations that closing agent failed to disclose secondary financing of the properties and the borrower’s excessive closing cost payments supported claims for breach of closing instruction contract and Closing Protection Letter, but that the economic loss rule prevented claims for the same conduct under tort theories). |
| [9](#co_fnRef_I7fb46231d6ee11ea8f41e1f6f2aa78) | *See* [West Knoxville Associates Ltd. Partnership v. Ticor Title Ins. Co., 124 F.3d 201 (6th Cir. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997186685&pubNum=0000506&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“An escrow agreement ‘is in essence a contractual undertaking to assure the carrying out of obligations already contracted for.’ ”); [Cloud v. Winn, 1956 OK 267, 303 P.2d 305, 308 (Okla. 1956)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1956124808&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_308&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_308) (“In order that [the] instrument may operate as an escrow … there must be a valid contract between the parties as to the subject matter of the instrument and the delivery …”); [Bowles v. Key Title Co., 163 Or. App. 9, 986 P.2d 1236, 1241 (1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999216538&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1241&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1241); [Williams v. Land Title Co. of Dallas, 1997 WL 196345 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication). |
| [10](#co_fnRef_I7fb46232d6ee11ea8f41e1f6f2aa78) | [Scholz Homes, Inc. v. Wallace, 590 F.2d 860, 863, 4 Fed. R. Evid. Serv. 205 (10th Cir. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979101640&pubNum=0000350&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_863&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_863); [Cloud v. Winn, 1956 OK 267, 303 P.2d 305, 308 (Okla. 1956)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1956124808&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_308&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_308); [Williams v. Land Title Co. of Dallas, 1997 WL 196345 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication). |
| [11](#co_fnRef_I7fb46233d6ee11ea8f41e1f6f2aa78) | [Scholz Homes, Inc. v. Wallace, 590 F.2d 860, 863, 4 Fed. R. Evid. Serv. 205 (10th Cir. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979101640&pubNum=0000350&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_863&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_863); [Cloud v. Winn, 1956 OK 267, 303 P.2d 305, 308 (Okla. 1956)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1956124808&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_308&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_308); [Williams v. Land Title Co. of Dallas, 1997 WL 196345 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication). *But see* [Lechner v. Halling, 35 Wash. 2d 903, 216 P.2d 179, 185 (1950)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1950103243&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_185&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_185). A court may, however, consider parol evidence if the terms of the escrow are not clear. The Lechner court stated:  When there is a deposit of instruments, allegedly in escrow, and conflict in the testimony as to the understanding of the parties relative to the conditions of the deposit, it is proper for the court to inquire into the facts and circumstances surrounding the transaction, in order to determine first, whether the parties intended a true conditional delivery, and second, whether they were in agreement as to the nature of the conditions, performance of which would authorize the depositary to convey to the grantee.  [Lechner v. Halling, 35 Wash. 2d 903, 216 P.2d 179, 185 (1950)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1950103243&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_185&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_185). *Compare* [SASA Investment Holdings, LLC v. Chhatrala, 2020 WL 819016 (S.D. Cal. 2020)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2050394203&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (recognizing duty of an escrow holder to comply strictly with instructions of its principal, but finding that wire transfer instructions were not escrow instructions). |
| [12](#co_fnRef_I7fb48940d6ee11ea8f41e1f6f2aa78) | *See* [Vandeventer v. Dale Const. Co., 277 Or. 817, 562 P.2d 196 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977112069&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cloud v. Winn, 1956 OK 267, 303 P.2d 305, 308 (Okla. 1956)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1956124808&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_308&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_308) (citing C.J.S., page 1200 § 6); [Williams v. Land Title Co. of Dallas, 1997 WL 196345 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication) (“an escrow agreement customarily is a written instrument containing a carefully drawn list of instructions that defines the duties of the escrow agent”). |
| [13](#co_fnRef_I7fb48941d6ee11ea8f41e1f6f2aa78) | *See generally* [Fidelity National Title Company v. First American Title Insurance Company, 2013 COA 80, 2013 WL 2286947, \*2 (Colo. App. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030609193&pubNum=0007780&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“the title commitment requirements are the “bible” that specifies all of the “particular items that need to be … met before” the closer can disburse funds at closing”). |
| [14](#co_fnRef_I7fb48942d6ee11ea8f41e1f6f2aa78) | [Claussen v. First America Title Guaranty Co., 186 Cal. App. 3d 429, 230 Cal. Rptr. 749, 752 (6th Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986151083&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_752&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_752); [Zang v. Northwestern Title Co., 135 Cal. App. 3d 159, 185 Cal. Rptr. 176, 181 (1st Dist. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982137292&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_181&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_181); [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 774 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_774&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_774); [Williams v. Land Title Co. of Dallas, 1997 WL 196345 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication), citing [Simpson v. Green, 231 S.W. 375, 377 (Tex. Comm’n App. 1921)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1921119716&pubNum=0000712&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_712_377&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_712_377). |
| [15](#co_fnRef_I7fb48943d6ee11ea8f41e1f6f2aa78) | [Scholz Homes, Inc. v. Wallace, 590 F.2d 860, 4 Fed. R. Evid. Serv. 205 (10th Cir. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979101640&pubNum=0000350&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Osborn v. Grego, 226 Kan. 212, 596 P.2d 1233 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979124713&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I7fb48944d6ee11ea8f41e1f6f2aa78) | [Amen v. Merced County Title Co., 58 Cal. 2d 528, 25 Cal. Rptr. 65, 375 P.2d 33, 35 (1962)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1962110405&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_35&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_35) (stating that an escrow agent will be liable for breaching an escrow instruction “that it had contracted to perform or … an implied promise arising out of the agreement with the buyer or seller”); [Kirk Corp. v. First American Title Co., 220 Cal. App. 3d 785, 270 Cal. Rptr. 24 (3d Dist. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990086684&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the recordation of a cancellation of lease was not a breach of the escrow agent’s duties where the recordation of such cancellation was implied from the escrow instructions); [Claussen v. First America Title Guaranty Co., 186 Cal. App. 3d 429, 230 Cal. Rptr. 749, 753 (6th Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986151083&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_753&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_753). |
| [17](#co_fnRef_I7fb4b050d6ee11ea8f41e1f6f2aa78) | *See* Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988) (stating that the escrow holder “must act strictly in accordance with the instructions and terms of the escrow agreement and is liable for departures therefrom”); *compare* [SASA Investment Holdings, LLC v. Chhatrala, 2020 WL 819016 (S.D. Cal. 2020)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2050394203&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (recognizing duty of an escrow holder to comply strictly with instructions of its principal, but finding that wire transfer instructions were not escrow instructions); [Donell v. Fidelity Nat. Title Agency of Nevada, Inc., 2012 WL 1669421, \*7 (D. Nev. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027685176&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d*; [Amen v. Merced County Title Co., 58 Cal. 2d 528, 25 Cal. Rptr. 65, 375 P.2d 33, 35 (1962)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1962110405&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_35&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_35); [Kirk Corp. v. First American Title Co., 220 Cal. App. 3d 785, 270 Cal. Rptr. 24 (3d Dist. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990086684&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 457 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_457&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_457) (“An escrow holder bears a fiduciary relationship to each party to the escrow and must comply strictly with the instructions of the principals…. If an escrow holder violates the instruction liability attaches for breach of contract.”); [Diaz v. United California Bank, 71 Cal. App. 3d 161, 139 Cal. Rptr. 314, 321 (2d Dist. 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977103314&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_321&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_321); [Commonwealth Land Title Ins. Co. v. Leidner, 169 A.D.2d 699, 564 N.Y.S.2d 187 (2d Dep’t 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991026310&pubNum=0000602&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Styrk v. Cornerstone Investments, Inc., 61 Wash. App. 463, 810 P.2d 1366 (Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991100767&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“When the required debt/appraisal ratio was not met …, the escrow agent could not close the transaction in full compliance with his instructions”); [Webster v. USLife Title Co., 123 Ariz. 130, 598 P.2d 108, 111 (Ct. App. Div. 1 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979125082&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_111&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_111); [Fretz v. First American Title Ins. Co., 161 Ariz. 174, 777 P.2d 672 (Ct. App. Div. 1 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989082203&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). In Fretz, the purchase agreement provided that Misztal would pay part of the purchase price in cash at closing and give the seller a promissory note for the remaining amount, secured by a deed of trust. A local office of First American Title Insurance Company was the escrow and closing agent for the sale and the trustee under the deed of trust. The purchase agreement also provided that the agents’ commission was to be treated as a separate escrow and be paid as follows: (i) 50% upon closing of the first eight acres of the tract; and (ii) 50% upon closing of the remaining nine acres. The escrow agreement for the sale included a provision obligating the seller to direct the trustee under the deed of trust to use all proceeds to satisfy seller’s obligations with respect to the land.  The agents received 50% of their commission at the closing for the first eight acres, which occurred in March of 1985. The purchaser defaulted on his balloon payment for the nine-acre parcel and the seller instructed First American to initiate a trustee’s sale. First American wired the proceeds of the sale directly to the seller without payment of the remaining commissions to the agents. The agents sued for payment of the commissions, claiming that First American violated the escrow instructions for the sale transaction. First American argued the escrow instructions for the purchase transaction were only applicable if the purchaser made the required balloon payment and that it had received the sale proceeds in its capacity as trustee, not as escrow agent. An Arizona statute discussing the distribution of proceeds from a trustee’s sale provided that the trustee should apply proceeds, first, to the costs and expenses of exercising the power of sale; second, to the payment of the contract secured by the trust deed; and, third, to payment of all other obligations provided in or secured by the trust deed.  The court held that the language in the escrow instructions obligating the trustee to discharge the seller’s obligations with respect to the land controlled. “[O]nce First American came into possession of the proceeds of the trustee’s sale, it was required by its escrow instructions to pay the balance of appellee’s commissions out of those proceeds before forwarding the remainder to [seller].” [Fretz v. First American Title Ins. Co., 161 Ariz. 174, 777 P.2d 672, 673–674 (Ct. App. Div. 1 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989082203&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_673&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_673). This case suggests that compliance with the escrow instructions takes precedence over other obligations of the escrow holder that are related to the transaction. |
| [18](#co_fnRef_I7fb4b051d6ee11ea8f41e1f6f2aa78) | [Orlando Millenia, LC v. United Title Services of Utah, Inc., 2015 UT 55, 355 P.3d 965, 973 (Utah 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036719496&pubNum=0004645&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_973&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_973); [Rivermont Village, Inc. v. Preferred Land Title, Inc., 371 S.W.3d 858 (Mo. Ct. App. S.D. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027688098&pubNum=0004644&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), reh’g and/or transfer denied, (June 5, 2012) and transfer denied, (Aug. 14, 2012); Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988) (holding that a change to the escrow agreement pursuant to the request of one party but without the other party’s knowledge constituted a breach of the escrow holder’s fiduciary duty); [Gattozzi v. Midland First American Nat. Title, 2000 WL 1369890](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000532147&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Ohio Ct. App. 8th Dist. Cuyahoga County 2000) (unpublished); [Ogdahl v. Title Ins. & Trust Co., 72 Cal. App. 3d Supp. 41, 140 Cal. Rptr. 148 (App. Dep’t Super. Ct. 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977143949&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (disapproved of on other grounds by, [Contemporary Investments, Inc. v. Safeco Title Ins. Co., 145 Cal. App. 3d 999, 193 Cal. Rptr. 822 (4th Dist. 1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983137582&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) (holding that sellers could not unilaterally rescind escrow instructions); [Wade v. Lake County Title Co., 6 Cal. App. 3d 824, 86 Cal. Rptr. 182, 184 (1st Dist. 1970)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1970111521&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_184&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_184) (“After written instructions signed by each party are deposited with the escrow holder, neither can change his instructions without the concurrence of the other”). *See also* [Tucson Title Ins. Co. v. D’Ascoli, 94 Ariz. 230, 383 P.2d 119 (1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963124104&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (commenting that an “escrow agent is held to strict compliance with the terms of the escrow agreement, and is liable for all damages resulting from any deviation.”). |
| [19](#co_fnRef_I7fb4b052d6ee11ea8f41e1f6f2aa78) | [Scholz Homes, Inc. v. Wallace, 590 F.2d 860, 863, 4 Fed. R. Evid. Serv. 205 (10th Cir. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979101640&pubNum=0000350&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_863&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_863); [Cloud v. Winn, 1956 OK 267, 303 P.2d 305, 309 (Okla. 1956)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1956124808&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_309&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_309); Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988); [Lechner v. Halling, 35 Wash. 2d 903, 216 P.2d 179, 185 (1950)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1950103243&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_185&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_185). |
| [20](#co_fnRef_I7fb4b053d6ee11ea8f41e1f6f2aa78) | *See* [Scholz Homes, Inc. v. Wallace, 590 F.2d 860, 4 Fed. R. Evid. Serv. 205 (10th Cir. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979101640&pubNum=0000350&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Orlando Millenia, LC v. United Title Services of Utah, Inc., 2015 UT 55, 355 P.3d 965, 971 (Utah 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036719496&pubNum=0004645&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_971&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_971); [Rivermont Village, Inc. v. Preferred Land Title, Inc., 371 S.W.3d 858, 863 (Mo. Ct. App. S.D. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027688098&pubNum=0004644&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4644_863&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4644_863), reh’g and/or transfer denied, (June 5, 2012) and transfer denied, (Aug. 14, 2012); [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988); [Gattozzi v. Midland First American Nat. Title, 2000 WL 1369890](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000532147&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Ohio Ct. App. 8th Dist. Cuyahoga County 2000) (unpublished); [Lacy v. Ticor Title Ins. Co., 794 S.W.2d 781 (Tex. App. Dallas 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990136088&pubNum=0000713&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ granted, (Nov. 28, 1990) and writ denied with per curiam opinion, [803 S.W.2d 265 (Tex. 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991031451&pubNum=0000713&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and writ withdrawn, (Jan. 30, 1991); [Dickens v. First American Title Ins. Co. of Arizona, 162 Ariz. 511, 784 P.2d 717 (Ct. App. Div. 2 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989176173&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Ogdahl v. Title Ins. & Trust Co., 72 Cal. App. 3d Supp. 41, 140 Cal. Rptr. 148 (App. Dep’t Super. Ct. 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977143949&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (disapproved of on other grounds by, [Contemporary Investments, Inc. v. Safeco Title Ins. Co., 145 Cal. App. 3d 999, 193 Cal. Rptr. 822 (4th Dist. 1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983137582&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) (holding that sellers could not unilaterally rescind escrow instructions; however, in the Contemporary Investments, Inc. case, the court held that under the circumstances in that case, the escrow holder had to follow the instructions of its principals revoking an order for the payment of a commission, both before and after the close of escrow.). *Compare* [Osborn v. Grego, 226 Kan. 212, 596 P.2d 1233 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979124713&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [21](#co_fnRef_I7fb4d760d6ee11ea8f41e1f6f2aa78) | [Claussen v. First America Title Guaranty Co., 186 Cal. App. 3d 429, 230 Cal. Rptr. 749, 754 (6th Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986151083&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_754&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_754) (holding that an inquiry by one party to the escrow regarding the status of funds on deposit did not constitute an instruction to hold closing pending receipt of expected funds). The Claussen court also noted that it is not customary to turn an inquiry into an instruction. [Claussen v. First America Title Guaranty Co., 186 Cal. App. 3d 429, 230 Cal. Rptr. 749, 754 (6th Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986151083&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_754&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_754). |
| [22](#co_fnRef_I7fb4d761d6ee11ea8f41e1f6f2aa78) | *See* Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988); [Lechner v. Halling, 35 Wash. 2d 903, 216 P.2d 179, 185 (1950)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1950103243&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_185&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_185). |
| [23](#co_fnRef_I7fb4d762d6ee11ea8f41e1f6f2aa78) | *See* [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that “unless it should be determined from the evidence that the parties intended to give the Tower lien unconditional priority, Ticor breached its contractual obligations by giving Ticor priority without obtaining clarification before proceeding.”); [Kirk Corp. v. First American Title Co., 220 Cal. App. 3d 785, 270 Cal. Rptr. 24 (3d Dist. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990086684&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (stating that an escrow holder is obliged to take corrective steps before obeying questionable instructions); [Flyer’s Body Shop Profit Sharing Plan v. Ticor Title Ins. Co., 185 Cal. App. 3d 1149, 230 Cal. Rptr. 276, 278 (1st Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986148167&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_278&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_278); [Diaz v. United California Bank, 71 Cal. App. 3d 161, 139 Cal. Rptr. 314, 321 (2d Dist. 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977103314&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_321&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_321); [Spaziani v. Millar, 215 Cal. App. 2d 667, 682, 30 Cal. Rptr. 658 (4th Dist. 1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963109600&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See also* [Suitts v. First Sec. Bank of Idaho, N.A., 100 Idaho 555, 602 P.2d 53, 58 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979126358&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_58&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_58) (holding that an escrowee violated the terms of the escrow by failing to request clarification of the parties’ rights). In the Suitts case, the Suitts were going to purchase property, cattle, and farm equipment from the McMurtreys over a period of time. A land sale contract, bill of sale, warranty deed from the McMurtreys to the Suitts, and a quitclaim deed from the Suitts back to the McMurtreys were placed in an escrow account at First Security Bank. The purchase contract provided that the documents in escrow would be delivered to the Suitts upon payment of the purchase price. The escrow contract contained a provision that allowed the escrow holder to withhold delivery and decline to make further payments until the rights, powers, and duties under the escrow contract were settled between the parties or by final judicial action.  Prior to complete payment of the purchase price, disputes arose between the parties concerning the legal description for the land and an easement. The Suitts filed a suit (“first case”) to settle these disputes. The trial court ruled in the Suitts favor, holding that the property description should be reformed, and that an obstruction in the easement must be removed. The McMurtreys immediately appealed the trial court’s decision. While the appeal was pending, the Suitts tendered the remainder of the purchase price to First Security. First Security accepted the payment and tendered it to the McMurtreys. The McMurtreys refused to accept the payment. First Security notified both parties that it was holding the escrow at status quo until the rights, duties, and powers of the parties became finally determined by judicial action. [Suitts v. First Sec. Bank of Idaho, N.A., 100 Idaho 555, 602 P.2d 53, 55 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979126358&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_55&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_55).  The Suitts then commenced a second action (“second case”) against First Security and the McMurtreys for wrongful failure to deliver the escrow documents. The Idaho Supreme Court determined in the appeal of the second case that, under the escrow agreement, if the escrow holder was going to withhold delivery, the holder must also refuse to accept further payments. The court reasoned, “it was incumbent upon First Security to take affirmative steps to seek clarification of its duties under the escrow agreement.” [Suitts v. First Sec. Bank of Idaho, N.A., 100 Idaho 555, 602 P.2d 53, 58 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979126358&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_58&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_58). The second part of the clause in the escrow contract allowing the escrow holder to obtain clarification of the parties’ rights by judicial action, in the court’s opinion, contemplated the escrow holder filing an interpleader action. “The responsibility of the escrow holder to seek clarification of its duties under the terms of the escrow was not satisfied by merely holding the escrow in limbo while it awaited the outcome of an appeal in an action brought by the parties to determine their rights and duties under the sales contract.” [Suitts v. First Sec. Bank of Idaho, N.A., 100 Idaho 555, 602 P.2d 53, 58–59 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979126358&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_58&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_58). |
| [24](#co_fnRef_I7fb6d330d6ee11ea8f41e1f6f2aa78) | The California Court of Appeals held in [Spaziani v. Millar, 215 Cal. App. 2d 667, 682, 30 Cal. Rptr. 658 (4th Dist. 1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963109600&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) that an escrow agent’s failure to clarify its instructions prior to closing the escrow could be a breach of its fiduciary duties. In Spaziani, the plaintiff obtained a real estate broker’s assistance in selling two adjoining pieces of land improved with rental homes. The broker was unable to sell the lots but informed the plaintiff that he wanted to purchase the lots. The plaintiff told the broker that she would “throw in” two additional unimproved lots located behind the listed lots if the broker purchased the same. The broker agreed to purchase the property for $22,000 by “securing a first deed of trust for approximately $10,000 on the front portion of the land where the houses were located” and he “would give her $2,000 down and she would carry the second trust deed back for the difference of [the] purchase price.” [Spaziani v. Millar, 215 Cal. App. 2d 667, 30 Cal. Rptr. 658, 660 (4th Dist. 1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963109600&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_660&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_660). The broker alleged that he told the plaintiff that he wanted the rear portion of the property free and clear in anticipation of developing such property.  Shortly after the parties agreed to the above terms, the broker prepared a deposit receipt agreement that provided as follows:  $2,000 down Balance $20,000 payable $120 per mo including 6% interest subordinated to a $10,000 trust deed payable $120 mo incl. 6% with release of 120 × 150 with easement to Holly St. Trust deed to be divided on each property proportionately— Buyer pay escrow. Interest at 6% per annum on unpaid portion of the purchase price to be included in the prescribed payments and possession given close of escrow.  [Spaziani v. Millar, 215 Cal. App. 2d 667, 30 Cal. Rptr. 658, 661 (4th Dist. 1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963109600&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_661&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_661).  The plaintiff signed the deposit receipt agreement and the broker took it to a title company for preparation of escrow instructions in accordance with the agreement. The escrow instructions provided that a first deed of trust would be for a construction loan, and that a second deed of trust would be given to the plaintiff. The instructions provided further that both deeds of trust were limited to the south portion of the property containing the rental homes. The broker subsequently obtained a loan for “purchase assistance” from Arrowhead Savings and Loan Association. When a loan officer from Arrowhead read the escrow instructions he noticed that the first deed of trust referred to a construction loan. The loan officer called the title company to inquire about the matter and was told that the construction loan referred to a different obligation. Without obtaining any further direction from the plaintiff, the title company proceeded to close the transaction.  After making three payments on his loan obligations, the broker defaulted. Arrowhead instituted foreclosure proceedings and the plaintiff brought suit against the title company for negligence and fraud. After discussing the fiduciary duties of an escrow holder, the court concluded:  In the case at bar, there was evidence from which the trial court could have found that the escrow holder proceeded to effect a transfer of the plaintiff’s title to [the broker] without determining her intention with respect to the terms of the first deed of trust to be placed against that property which was to take precedence over the deed of trust securing payment to her of the balance of the purchase price, and from the facts it also could have found that the escrow holder was negligent in the discharge of its duty to exercise due skill and diligence in the performance of its agreement with the plaintiff. In substance, the action of the escrow holder in causing recordation of the deed from the plaintiff to [the broker] without instructions from her respecting the terms of the deed of trust which was to precede that given as security for payment of the purchase price balance, amounted to an exercise of authority without first determining the conditions under which that authority might be exercised or, stated otherwise, constituted a disposition of the plaintiff’s property without instructions in the premises because the instructions given were meaningless.  [Spaziani v. Millar, 215 Cal. App. 2d 667, 677, 30 Cal. Rptr. 658 (4th Dist. 1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963109600&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that “unless it should be determined from the evidence that the parties intended to give the Tower lien unconditional priority, Ticor breached its contractual obligations by giving Ticor priority without obtaining clarification before proceeding.”). |
| [25](#co_fnRef_I7fb6d331d6ee11ea8f41e1f6f2aa78) | For example, in [Axley v. Transamerica Title Ins. Co., 88 Cal. App. 3d 1, 151 Cal. Rptr. 570, 574 (4th Dist. 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979146621&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_574&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_574), the California Court of Appeals held that a title company serving as escrowee was not liable for failing to point out that an amendment to the transaction diminished the seller’s security. *See also* [Donell v. Fidelity Nat. Title Agency of Nevada, Inc., 2012 WL 1669421, \*7 (D. Nev. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027685176&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d*; [Szelc v. Stanger, 2011 WL 1467187 (D.N.J. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025093334&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (title insurer owed no duty to the apparent signor to inquire further as to the validity of the signature on a notarized power of attorney document); [Siegel v. Fidelity Nat. Title Ins. Co., 46 Cal. App. 4th 1181, 1194, 54 Cal. Rptr. 2d 84 (2d Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996143274&pubNum=0003484&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* [SASA Investment Holdings, LLC v. Chhatrala, 2020 WL 819016 (S.D. Cal. 2020)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2050394203&pubNum=0000999&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding that wire transfer instructions were not escrow instructions). |
| [26](#co_fnRef_I7fb6d332d6ee11ea8f41e1f6f2aa78) | [Axley v. Transamerica Title Ins. Co., 88 Cal. App. 3d 1, 151 Cal. Rptr. 570, 574 (4th Dist. 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979146621&pubNum=0000227&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_574&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_574). |
| [27](#co_fnRef_I7fb6fa40d6ee11ea8f41e1f6f2aa78) | *See* [In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344, 1362 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995071125&pubNum=0000162&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1362&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1362):  Any broker participating in a transaction where buyer and seller are not represented should have the experience and knowledge required at least to identify a situation where independent counsel is needed. Under those circumstances the broker has a duty, in accordance with the standards of the profession, to inform either seller or buyer of that fact. Presumably, the same duty applies to any title officer … who becomes aware of the need of either party for independent counsel. In addition to whatever potential action might be taken by the bodies that regulate brokers and title officers, as well as by their own associations, their failure to inform exposes them to the risk of civil liability for resulting damages…. Not only did the escrow instructions state that Title Insurance was to record all papers, the normal exigencies of the situation called for them to do so. The act of recording is in their line of business—a normal part of their duties, not an exception. Part of the expectancies of ordinary laymen … is that the escrow agent will record the necessary documents.  [Allen v. Webb, 87 Nev. 261, 485 P.2d 677, 681 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971124271&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_681&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_681):  Title Insurance orally promised to record [the trust deed] and the eminence, experience and knowledge of Title Insurance in its field is that of handling the minutiae of real estate closings. From their superior knowledge flowed a duty to their clients … to do such things as recording documents or advise them when they did not. Theirs is the knowledge of a lawyer. In fact, they acted the part in preparing the documents.  *Accord* [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 264 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_264&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_264) (holding that, because title companies now perform a service that was formerly provided by attorneys, their standard of care is equivalent to the standard of care expected of attorneys). *See, generally,* [Morley v. J. Pagel Realty and Ins., 27 Ariz. App. 62, 550 P.2d 1104 (Div. 2 1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976114470&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [28](#co_fnRef_I7fb6fa41d6ee11ea8f41e1f6f2aa78) | *See* [In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344, 1362 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995071125&pubNum=0000162&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1362&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1362); [Allen v. Webb, 87 Nev. 261, 485 P.2d 677, 681 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971124271&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_681&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_681). |
| [29](#co_fnRef_I7fb6fa42d6ee11ea8f41e1f6f2aa78) | *See* [In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344, 1362 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995071125&pubNum=0000162&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1362&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1362); [National Bank of Washington v. Equity Investors, 81 Wash. 2d 886, 506 P.2d 20 (1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973122063&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Allen v. Webb, 87 Nev. 261, 485 P.2d 677, 681 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971124271&pubNum=0000661&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_681&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_681). *See infra* §§ [20:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a4&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [20:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a5&originatingDoc=If4f5ae776fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I7fdaaee0d6ee11ea8f41e1f6f2a)**

§ 20:4. Title companies’ duties as escrow and closing agents—Duty to disclose and inform

Courts have held that a title insurance company which serves as escrow and closing agent has a fiduciary duty to communicate knowledge of material facts acquired in the course of its agency to its principals.[1](#co_footnote_I7fdaaee1d6ee11ea8f41e1f6f2a) Facts material to the parties to the escrow include title matters, fraud, and facts that affect the party’s interest in the real estate.

When the title insurance agent does not separately contract to provide escrow and closing services and claims it provides escrow and closing services only in implementation of a title *insurer’s* contract to issue an insurance policy, the question is whether the title *insurer* itself has a duty of disclosure to the insurance applicant. John Hosack and Jason Goldstein explain that the law on a title insurer’s duty of disclosure is in flux, depending on whether the insurer is considered to be “a fiduciary, a quasi-fiduciary or in a ‘… special relationship with the insured …’”[2](#co_footnote_I7fdcaab0d6ee11ea8f41e1f6f2a) Such relationships create duties that “clearly encompass forthright and affirmative disclosures.”[3](#co_footnote_I7fdcaab1d6ee11ea8f41e1f6f2a) Nevertheless, even where a title insurer is deemed to have no fiduciary or special relationship with its insured, the insurer is liable for misrepresentations of known facts.[4](#co_footnote_I7fdcaab2d6ee11ea8f41e1f6f2a)

Regarding title matters specifically, if a title insurance company has been employed only as escrow agent for the transaction, the escrow agent’s general duty to disclose facts material to the parties still may constitute a duty to disclose title defects of which the company gains actual knowledge. If the title company also is issuing title insurance in the transaction and performs a [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for that purpose, jurisdictions have split on whether the company has a duty to the parties to disclose all defects in title that a competent title search should have revealed. This issue is examined in [§§ 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. Of course, if the title company serving as escrow agent is expressly hired to perform a title search and report for one of the parties, then the company will be liable for failing to perform its contract.

In *Cano v. Lovato*[5](#co_footnote_I7fdcd1c1d6ee11ea8f41e1f6f2a) the New Mexico Court of Appeals held that a title company’s failure to communicate knowledge of delinquent taxes to the purchaser was a breach of its fiduciary duty as closing agent. In *Cano*, the purchaser, Lovato, signed a purchase agreement with a decedent’s estate (the “Estate”). The purchase was contingent on the seller’s payment of any delinquent taxes. New Mexico Title [“N.M. Title”] was hired to issue a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and act as closing agent for the purchase.[6](#co_footnote_I7fdcd1c2d6ee11ea8f41e1f6f2a)

In fact, the real property taxes for the property had not been paid during the years 1976 through 1979. One of the employees of N.M. Title discovered the delinquency when conducting a tax search but did not inform the Estate or the purchaser. Neither did N.M. Title inquire as to a possible tax sale for collection of the back taxes.[7](#co_footnote_I7fdcd1c3d6ee11ea8f41e1f6f2a) A tax sale actually had been conducted on September 30, 1980, and the Canos were given a deed to the property one month later. The Estate’s sale to Lovato closed on October 3, 1980.[8](#co_footnote_I7fdcd1c4d6ee11ea8f41e1f6f2a) The closing statement for the sale to Lovato did reflect the delinquent taxes and N.M. Title withheld funds at closing to pay the taxes. On October 9, 1980, N.M. Title attempted to pay the taxes and discovered the sale of the property to the Canos. N.M. Title returned the funds to the escrow account and recorded Lovato’s real estate purchase contract with the county clerk.

N.M. Title argued both that it was not negligent in closing the transaction between Lovato and the Estate and that it was not the proximate cause of the delinquent taxes or the tax sale.[9](#co_footnote_I7fdcf8d0d6ee11ea8f41e1f6f2a) The court concluded that N.M. Title was the agent for both the Estate and Lovato and that it owed a fiduciary duty to both parties. “This relationship obligated N.M. Title to exercise ordinary care, or reasonable diligence, to communicate to both Lovato and the Estate knowledge acquired in the course of its agency with respect to matters pertaining thereto.”[10](#co_footnote_I7fdcf8d1d6ee11ea8f41e1f6f2a) Therefore, the court concluded, “N.M. Title … acquired information which it knew could affect the status of the property being closed. N.M. Title took no action to further investigate, or to inform the parties of delinquent taxes, the transfer for collection and the possibility of the tax sale. There was, therefore, substantial evidence to support a finding of a breach of duty to use ordinary care.”[11](#co_footnote_I7fdcf8d2d6ee11ea8f41e1f6f2a)

In *Garton v. Title Insurance & Trust Co.*,[12](#co_footnote_I7fdcf8d3d6ee11ea8f41e1f6f2a) the California Court of Appeals also held that a title company may be liable for breach of duty as escrowee for failing to inform a party of a title defect. In *Garton*, the title company prepared four title reports covering the property. Only the fourth report revealed a mineral reservation. The purchasers prepared escrow instructions based on the third report. No mineral reservation appeared in either the note or [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that the purchasers signed. Thereafter, the title company appended an exception to the deed of trust for the mineral reservation. The purchasers sued the title company for failing to inform them of the reservation before they closed the loan and purchase transactions.[13](#co_footnote_I7fdcf8d4d6ee11ea8f41e1f6f2a) The court stated:

Plaintiffs allege: defendants failed to inform them that the land to be purchased was subject to a reservation of [**mineral rights**](http://practicallawconnect.thomsonreuters.com/Document/Id615fa0db8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); defendants prepared the deed of trust which plaintiffs executed without placing an exception for the mineral rights therein so that plaintiffs did not discover the reservation when they executed the deed of trust; and, when defendants discovered their error they failed to inform plaintiffs of the error but rather altered the deed of trust and took a false acknowledgment so that plaintiffs were prevented from learning of the reservation of mineral rights. These allegations sufficiently allege a breach of duty by defendants.[14](#co_footnote_I7fdcf8d5d6ee11ea8f41e1f6f2a)

The Florida Court of Appeals also has held that a closing agent’s failure to disclose existing easements and encroachments prior to closing might be a breach of the agent’s fiduciary duty. In *Daniel v. Coastal Bonded Title Co.*,[15](#co_footnote_I7fdcf8d6d6ee11ea8f41e1f6f2a) the title company delivered to the purchasers a commitment for title insurance containing a standard exception for easements, encroachments, and overlaps that would have been revealed by an accurate survey. After the closing, a title company employee added a handwritten exception to the policy for a “2.8 encroachment in rear utility easement as shown on survey.”[16](#co_footnote_I7fdd1fe0d6ee11ea8f41e1f6f2a) The purchasers alleged at trial that the title company had in its possession at closing a survey showing encroachments on the north, south, and east boundaries of the property. The purchasers claimed that the failure to disclose damaged them because of their inability to subsequently sell the property. The purchasers alleged that they would not have closed the transaction if the easements had been disclosed.[17](#co_footnote_I7fdd1fe1d6ee11ea8f41e1f6f2a) The court concluded that the purchasers stated a valid cause of action for the intentional and negligent breach of fiduciary duty for failing to disclose the easements and encroachments prior to closing.[18](#co_footnote_I7fdd1fe2d6ee11ea8f41e1f6f2a)

Some courts describe the escrow or closing agent’s duty to communicate as a duty to disclose all facts that materially affect the interests of the principals to the escrow.[19](#co_footnote_I7fdd1fe3d6ee11ea8f41e1f6f2a) The California Court of Appeals has commented, “[d]eceit may consist of the suppression of a fact by one who is bound to disclose it or who gives information of other facts which are likely to mislead for want of communication of that fact. The intentional failure to disclose a material fact is actionable fraud if there is a fiduciary relationship giving rise to the duty to disclose it.”[20](#co_footnote_I7fdd1fe4d6ee11ea8f41e1f6f2a)

Other courts describe the escrow agent’s duty to communicate as a duty to disclose information pertaining to whether the transaction is in compliance with the parties’ instructions.[21](#co_footnote_I7fdd1fe5d6ee11ea8f41e1f6f2a) In *Dixon v. Shirley*, a Texas appellate court held that summary judgment for a title company was improper where the legal description for the property was inconsistent in the various closing documents.[22](#co_footnote_I7fdd46f0d6ee11ea8f41e1f6f2a) In this case, the Dixons entered an agreement to purchase “Addition Four Bluff Estates #1, Lot 2, 3, N 30 of 4, and 16, Block E.”[23](#co_footnote_I7fdd46f1d6ee11ea8f41e1f6f2a) A real estate agent told the Dixons that the property included all of Lots 2, 3 and 16 and the north 30 feet of Lot 4. The title company prepared a deed and title policy covering only the north 30 feet of Lot 16.[24](#co_footnote_I7fdd46f2d6ee11ea8f41e1f6f2a) The Dixons began clearing and leveling the land for construction and were informed by the Welches that the Welches owned the southern portion of Lot 16. The Dixons sued the title company for negligence. The court noted that the title company had discovered that the Dixons’ predecessors in title only owned the north 1/2 of Lot 16 during its title examination. The court determined the title company had a duty to notify the parties that they could not insure the property described in the contract. The court reasoned:

The title company cannot intentionally or negligently permit parties to a contract to close a real estate transaction at its place of business, at its invitation, knowing all along that the contract for sale called for different property than that set forth in its policy which it issued without full disclosure. The title company invited the parties to close the transaction at its office. Its agents assured the Dixons that the instrument prepared and the title of insurance covered the subject contract. The entire problem of the Dixons’ damages would have been avoided by the title company speaking at a time when its duty to speak was clear.[25](#co_footnote_I7fdd46f3d6ee11ea8f41e1f6f2a)

An escrow agent’s duty to disclose or communicate information to its principals does not include the duty to advise as to the legal effect of documents.[26](#co_footnote_I7fdd46f4d6ee11ea8f41e1f6f2a) Similarly, the escrow agent does not have a duty to advise regarding the financial wisdom of the transaction.[27](#co_footnote_I7fdd6e00d6ee11ea8f41e1f6f2a) Commenting on either the legal effect of documents in escrow or the financial desirability of the transaction might violate the escrow holder’s duty to remain neutral.[28](#co_footnote_I7fdd6e01d6ee11ea8f41e1f6f2a) At the same time, the escrow agent does have the duty to advise parties when deposits or documents do not meet the requirements of the parties’ contract.[29](#co_footnote_I7fdd6e02d6ee11ea8f41e1f6f2a)

Furthermore, escrow and closing agents have a duty to identify when an aspect of a real estate transaction is beyond their expertise and advise the parties to seek legal counsel. If lay escrow and closing agents assume the attorney’s role, they also assume the attorney’s liability for malpractice.

Any broker participating in a transaction where buyer and seller are not represented should have the experience and knowledge required at least to identify a situation where independent counsel is needed. Under those circumstances the broker has a duty, in accordance with the standards of the profession, to inform either seller or buyer of that fact. Presumably, the same duty applies to any title officer … who becomes aware of the need of either party for independent counsel. In addition to whatever potential action might be taken by the bodies that regulate brokers and title officers, as well as by their own associations, their failure to inform exposes them to the risk of civil liability for resulting damages.[30](#co_footnote_I7fdd6e03d6ee11ea8f41e1f6f2a)

A title company employee performing the role of an attorney also has been held to assume the attorney’s obligation to disclose conflicts of interest inherent in representing both a buyer and seller in a real estate transaction and to discuss the option of their seeking independent legal counsel.[31](#co_footnote_I7fdf90e0d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I7fdaaee0d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I7fdaaee1d6ee11ea8f41e1f6f2aa78) | *See* [West Knoxville Associates Ltd. Partnership v. Ticor Title Ins. Co., 124 F.3d 201 (6th Cir. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997186685&pubNum=0000506&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“An escrow holder occupies a fiduciary relationship with both the parties to the escrow agreement, and has attendant duties of loyalty, disclosure, and care….”); [Freedom Mortg. Corp. v. Burnham Mortg., Inc., 720 F. Supp. 2d 978 (N.D. Ill. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022319524&pubNum=0004637&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Home Loan Corp. v. Texas American Title Co., 191 S.W.3d 728 (Tex. App. Houston 14th Dist. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2009070170&pubNum=0004644&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Diaz v. United California Bank, 71 Cal. App. 3d 161, 139 Cal. Rptr. 314, 320 (2d Dist. 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977103314&pubNum=0000227&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_320&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_320); [Spaziani v. Millar, 215 Cal. App. 2d 667, 682, 30 Cal. Rptr. 658 (4th Dist. 1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963109600&pubNum=0000227&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“The obligation of an escrow holder to disclose to his principal information acquired by him in the course of his employment must be viewed in the light of the fiduciary relationship existing between them”). *See also* [Sanders v. Park Towne, Ltd., 2 Kan. App. 2d 313, 578 P.2d 1131, 1135 (1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978109570&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1135&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1135); [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 774 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_774&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_774); [Williams v. Land Title Co. of Dallas, 1997 WL 196345 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication).  In California, the escrow agent has both a fiduciary duty and a statutory duty. *See* Hosack & Goldstein, *Bankers Trust Company v. Transamerica Title Insurance and Its Progeny: A Construction Lender’s Nightmare*, in American College of Mortgage Attorneys, The ABSTRACT, p. 18 (Fall 2018) (applying [California Ins. Code §§ 330](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS330&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [332](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS332&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))):  The Escrow Agent’s Fiduciary Duty of Disclosure  In California, and a number of other states, the escrow agent, which is sometimes also an underwritten title company, is considered to be a fiduciary and to have a fiduciary duty of disclosure, which it owes to the parties to the escrow. The disclosure duty includes matters known to the escrow agent that are material to the escrow (i.e., there has been a commencement of the work of improvement, and mechanic’s liens have attached to the property).  The Escrow Agent’s Statutory Duty of Disclosure  Assuming that the escrow agent for the construction loan is an underwritten title company in the state of California, it would be governed by [California Insurance Code §§ 330](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS330&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [332](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS332&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), which requires each party to a contract of insurance to communicate information that they believe to be material to the other party.  *Compare* [Contawe v. Crescent Heights of America, Inc., 2004 WL 2244538 (E.D. Pa. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005239835&pubNum=0000999&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [In re Johnson, 292 B.R. 821 (Bankr. E.D. Pa. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003360192&pubNum=0000164&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Pennsylvania does not automatically recognize a fiduciary relationship between the closing agent and borrower without a showing that the closing agent established a special relation of trust with the borrower.). *See also* [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158 (N.D. Ohio 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), holding that Ohio has not recognized a general fiduciary duty between a title insurance company and a borrower, but not determining whether a fiduciary duty would exist if the plaintiff had alleged that the title insurance company was serving as escrow and closing agent. The court held that whether the title insurance company had a duty to inform borrowers that state law mandated a “reissue rate” for their refinancing lender’s loan policy depended upon the relationship between the title insurance company and the borrowers, and on whether the title insurance company had communicated the rate to the borrowers. The pleadings did not make clear whether the title insurance company communicated to the borrowers the rate for their lender’s title insurance, or the lender, or a third party closing agent.  Though incorrectly cited by title insurers as saying they have no fiduciary duty as escrow or closing agent requiring disclosure of known facts about a title insurance applicant’s transaction, the case of [Fogg v. Fidelity Nat. Title Ins. Co., 89 A.3d 510 (D.C. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033264268&pubNum=0007691&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) is distinguishable. The plaintiff had not argued that its own escrow and title insurance agent had a fiduciary duty to disclose facts about its transaction. Instead, the plaintiff contended that a prior purchaser’s escrow and title insurance agent knew of a secondary lien, and its knowledge was imputed to and continued to be known by the title insurer so that this title insurer would have a fiduciary duty to disclose that secondary lien to all subsequent buyers who applied to it to insure the same property, even if a subsequent buyer used a different escrow and title insurance agent who did not learn of the lien. |
| [2](#co_fnRef_I7fdcaab0d6ee11ea8f41e1f6f2aa78) | Hosack & Goldstein, *Bankers Trust Company v. Transamerica Title Insurance and Its Progeny: A Construction Lender’s Nightmare*, in American College of Mortgage Attorneys, The ABSTRACT, p. 19 (Fall 2018), *citing* [Egan v. Mutual of Omaha Ins. Co., 24 Cal. 3d 809, 820, 169 Cal. Rptr. 691, 620 P.2d 141 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980149153&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Frommoethelydo v. Fire Ins. Exchange, 42 Cal. 3d 208, 215, 228 Cal. Rptr. 160, 721 P.2d 41 (1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986139741&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Village Northridge Homeowners Assn. v. State Farm Fire & Casualty Co., 50 Cal. 4th 913, 929, 114 Cal. Rptr. 3d 280, 237 P.3d 598 (2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022876385&pubNum=0004645&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  Some jurisdictions have held that an insurer’s issuance of a title insurance contract alone does not create a fiduciary duty to its insured (*e.g.*, [Fogg v. Fidelity Nat. Title Ins. Co., 89 A.3d 510 (D.C. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033264268&pubNum=0007691&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))), but this is distinct from the question of whether an escrow and closing agent has a fiduciary relationship with a party for whom it is closing a real estate transaction. |
| [3](#co_fnRef_I7fdcaab1d6ee11ea8f41e1f6f2aa78) | Hosack & Goldstein, *Bankers Trust Company v. Transamerica Title Insurance and Its Progeny: A Construction Lender’s Nightmare*, in American College of Mortgage Attorneys, The ABSTRACT, p. 19 (Fall 2018). |
| [4](#co_fnRef_I7fdcaab2d6ee11ea8f41e1f6f2aa78) | Hosack & Goldstein, *Bankers Trust Company v. Transamerica Title Insurance and Its Progeny: A Construction Lender’s Nightmare*, in American College of Mortgage Attorneys, The ABSTRACT, p. 19 (Fall 2018), *citing* [Alliance Mortgage Co. v. Rothwell, 10 Cal. 4th 1226, 44 Cal. Rptr. 2d 352, 900 P.2d 601 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995178607&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7fdcd1c1d6ee11ea8f41e1f6f2aa78) | [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 775 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_775&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_775). *See also* [Red Lobster Inns of America, Inc. v. Lawyers Title Ins. Corp., 492 F. Supp. 933, 941 (E.D. Ark. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980119400&pubNum=0000345&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_941&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_941), aff’d in part, rev’d in part on other grounds, [656 F.2d 381 (8th Cir. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981136111&pubNum=0000350&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that a title company escrow agent breached its fiduciary duty by failing to inform the purchaser of a deed restriction where the purchaser had a separate agreement for title insurance with the title company’s underwriter that emphasized the importance of identifying restrictions of record); [Kraft v. Bartholomew, 1 Haw. App. 459, 620 P.2d 755, 757–758 (1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980150333&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_757&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_757) (holding that the title company breached its fiduciary duty to inform the purchasers of encumbrances on the property after several inquiries from the purchasers as to the delay in closing). In Kraft, the title company gave a copy of the title search indicating the encumbrances to the sellers but not the purchasers. The purchasers eventually discovered that a mortgage foreclosure suit had been pending since the inception of the transaction. The purchasers lost their down payment as well as money spent for improvements to the property due to the foreclosure. The title company also was aware that the sellers were not being forthright with the purchasers as to outstanding liens and encumbrances on the title. |
| [6](#co_fnRef_I7fdcd1c2d6ee11ea8f41e1f6f2aa78) | [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 764 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_764&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_764). |
| [7](#co_fnRef_I7fdcd1c3d6ee11ea8f41e1f6f2aa78) | [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 764 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_764&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_764). |
| [8](#co_fnRef_I7fdcd1c4d6ee11ea8f41e1f6f2aa78) | [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 765 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_765&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_765). |
| [9](#co_fnRef_I7fdcf8d0d6ee11ea8f41e1f6f2aa78) | [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 773–774 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_773&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_773). |
| [10](#co_fnRef_I7fdcf8d1d6ee11ea8f41e1f6f2aa78) | [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 774 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_774&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_774). |
| [11](#co_fnRef_I7fdcf8d2d6ee11ea8f41e1f6f2aa78) | [Cano v. Lovato, 105 N.M. 522, 734 P.2d 762, 774 (Ct. App. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987037662&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_774&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_774). |
| [12](#co_fnRef_I7fdcf8d3d6ee11ea8f41e1f6f2aa78) | [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 458 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_458&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_458). |
| [13](#co_fnRef_I7fdcf8d4d6ee11ea8f41e1f6f2aa78) | [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 454 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_454&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_454). |
| [14](#co_fnRef_I7fdcf8d5d6ee11ea8f41e1f6f2aa78) | [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 458 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_458&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_458). |
| [15](#co_fnRef_I7fdcf8d6d6ee11ea8f41e1f6f2aa78) | [Daniel v. Coastal Bonded Title Co., 539 So. 2d 567 (Fla. Dist. Ct. App. 5th Dist. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989009056&pubNum=0000735&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I7fdd1fe0d6ee11ea8f41e1f6f2aa78) | [Daniel v. Coastal Bonded Title Co., 539 So. 2d 567 (Fla. Dist. Ct. App. 5th Dist. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989009056&pubNum=0000735&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I7fdd1fe1d6ee11ea8f41e1f6f2aa78) | [Daniel v. Coastal Bonded Title Co., 539 So. 2d 567 (Fla. Dist. Ct. App. 5th Dist. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989009056&pubNum=0000735&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I7fdd1fe2d6ee11ea8f41e1f6f2aa78) | The court stated further that “if the failure to disclose was done with a fraudulent intent to induce the [purchasers] to close to promote the title company’s self-interest” the purchasers might also have a cause for fraud and deceit. [Daniel v. Coastal Bonded Title Co., 539 So. 2d 567, 569 (Fla. Dist. Ct. App. 5th Dist. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989009056&pubNum=0000735&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_569&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_569). |
| [19](#co_fnRef_I7fdd1fe3d6ee11ea8f41e1f6f2aa78) | *See* [Musselman v. Southwinds Realty, Inc., 146 Ariz. 173, 704 P.2d 814, 817 (Ct. App. Div. 2 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985142199&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_817&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_817); [Alliance Mortgage Co. v. Rothwell, 34 Cal. Rptr. 2d 700, 716 (App. 1st Dist. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994198808&pubNum=0003484&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_3484_716&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_3484_716), review granted and opinion superseded, [37 Cal. Rptr. 2d 57, 886 P.2d 606 (Cal. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995032439&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and judgment aff’d, [10 Cal. 4th 1226, 44 Cal. Rptr. 2d 352, 900 P.2d 601 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995178607&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Moe v. Transamerica Title Ins. Co., 21 Cal. App. 3d 289, 98 Cal. Rptr. 547, 558 (1st Dist. 1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971103745&pubNum=0000227&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_558&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_558) (stating that the duty to disclose includes “any facts which might materially affect” the escrow principals’ interests, and holding title company liable for fraud where it failed to disclose a pending bankruptcy proceeding); [Sudberry v. Lowke, 403 So. 2d 1117, 1118 (Fla. Dist. Ct. App. 5th Dist. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981140177&pubNum=0000735&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_1118&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_1118) (holding that the trial court erred in dismissing the buyers’ claim against the title company for failure to notify the buyers of an increase in the interest rate prior to closing). |
| [20](#co_fnRef_I7fdd1fe4d6ee11ea8f41e1f6f2aa78) | [Alliance Mortgage Co. v. Rothwell, 34 Cal. Rptr. 2d 700, 716 (App. 1st Dist. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994198808&pubNum=0003484&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_3484_716&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_3484_716), review granted and opinion superseded, [37 Cal. Rptr. 2d 57, 886 P.2d 606 (Cal. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995032439&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and judgment aff’d, [10 Cal. 4th 1226, 44 Cal. Rptr. 2d 352, 900 P.2d 601 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995178607&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) [citations omitted]. *See also* [Musselman v. Southwinds Realty, Inc., 146 Ariz. 173, 704 P.2d 814, 817 (Ct. App. Div. 2 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985142199&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_817&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_817). |
| [21](#co_fnRef_I7fdd1fe5d6ee11ea8f41e1f6f2aa78) | *See* [Rivermont Village, Inc. v. Preferred Land Title, Inc., 371 S.W.3d 858, 863 (Mo. Ct. App. S.D. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027688098&pubNum=0004644&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4644_863&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4644_863), reh’g and/or transfer denied, (June 5, 2012) and transfer denied, (Aug. 14, 2012); [Florida Southern Abstract & Title Co. v. Bjellos, 346 So. 2d 635, 637 (Fla. Dist. Ct. App. 2d Dist. 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977118328&pubNum=0000735&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_637&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_637) (holding that the title company “was at least obligated to examine the instrument presented and point out the possibility that it did not constitute the ‘negative termite report’ that was a condition to closing”); [Styrk v. Cornerstone Investments, Inc., 61 Wash. App. 463, 810 P.2d 1366, 1371 (Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991100767&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1371&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1371) (“the fiduciary duty owed by [the closing attorney] to the Styrks under the circumstances of this case is broad enough to require disclosure to the Styrks of all information they might need for a determination as to whether or not the transactions were being closed in full compliance with the escrow instructions.”). *See also* [Bortz v. Noon, 698 A.2d 1311, 1319 (Pa. Super. Ct. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997150265&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1319&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1319), rev’d on other grounds, [556 Pa. 489, 729 A.2d 555 (1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999106470&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (stating that the escrow agent’s duty included “notice of pitfalls which the title company is not capable of addressing, including sewer problems.”). In Bortz, the mortgage lender required that the property’s on-site septic system pass a dye test prior to closing. Ten days prior to closing the title company notified the lender that the property passed the dye test. At closing, an employee of the title company advised the purchasers/borrowers that he had received the results of the dye test and the system passed. Subsequent to closing, the property failed to pass an additional dye test. The purchasers’ only alternative was to connect the property to the public sewer system at a cost in excess of $15,000. [Bortz v. Noon, 698 A.2d 1311, 1313–1314 (Pa. Super. Ct. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997150265&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1313&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1313), rev’d on other grounds, [556 Pa. 489, 729 A.2d 555 (1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999106470&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The trial court dismissed the purchasers’ claim against the title company, stating that the title company did not owe the purchasers a duty because there was no privity of contract.  The appellate court disagreed with the trial court, concluding that the title company was performing closing duties for both the purchasers and the lender and, therefore, the title company owed some duty to the purchasers. The appellate court stated that the title company could be liable for fraudulent misrepresentation if the title company’s employee knew that the dye test was not clear when he represented that it was. [Bortz v. Noon, 698 A.2d 1311, 1318–1319 (Pa. Super. Ct. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997150265&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1318&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1318), rev’d on other grounds, [556 Pa. 489, 729 A.2d 555 (1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999106470&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The court noted that the purchasers paid the title company for closing services. Accordingly, the title company was to perform all necessary duties for the closing on the property. These duties included notice of the dye test results. *But see* [Contawe v. Crescent Heights of America, Inc., 2004 WL 2244538 (E.D. Pa. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005239835&pubNum=0000999&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that, although title company acted as closing agent and arranged for purchase of title insurance pursuant to a contractual relationship, title company was not consequently under a contractual or fiduciary duty to provide plaintiffs with title information). |
| [22](#co_fnRef_I7fdd46f0d6ee11ea8f41e1f6f2aa78) | [Dixon v. Shirley, 558 S.W.2d 112 (Tex. Civ. App. Corpus Christi 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977137588&pubNum=0000713&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ refused n.r.e., (Apr. 12, 1978). |
| [23](#co_fnRef_I7fdd46f1d6ee11ea8f41e1f6f2aa78) | [Dixon v. Shirley, 558 S.W.2d 112, 114 (Tex. Civ. App. Corpus Christi 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977137588&pubNum=0000713&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_114&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_114), writ refused n.r.e., (Apr. 12, 1978). |
| [24](#co_fnRef_I7fdd46f2d6ee11ea8f41e1f6f2aa78) | The Dixons alleged that the title company’s agent told them at closing that all papers were in accordance with the purchase contract. [Dixon v. Shirley, 558 S.W.2d 112, 114 (Tex. Civ. App. Corpus Christi 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977137588&pubNum=0000713&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_114&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_114), writ refused n.r.e., (Apr. 12, 1978). |
| [25](#co_fnRef_I7fdd46f3d6ee11ea8f41e1f6f2aa78) | [Dixon v. Shirley, 558 S.W.2d 112, 117 (Tex. Civ. App. Corpus Christi 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977137588&pubNum=0000713&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_117&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_117), writ refused n.r.e., (Apr. 12, 1978). |
| [26](#co_fnRef_I7fdd46f4d6ee11ea8f41e1f6f2aa78) | *See* [Gebrayel v. Transamerica Title Ins. Co., 132 Or. App. 271, 888 P.2d 83, 88 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995024062&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_88&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_88); [National Bank of Washington v. Equity Investors, 81 Wash. 2d 886, 506 P.2d 20, 36 (1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973122063&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_36&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_36) (stating that counsel as to the legal effect of documents by the title company would be the unauthorized practice of law). |
| [27](#co_fnRef_I7fdd6e00d6ee11ea8f41e1f6f2aa78) | *See* [In re Johnson, 292 B.R. 821 (Bankr. E.D. Pa. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003360192&pubNum=0000164&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Shaheen v. American Title Ins. Co., 120 Ariz. 505, 586 P.2d 1317 (Ct. App. Div. 1 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978131511&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the escrow agent had no duty to advise the mortgage lender of the adequacy or inadequacy of the land as security for the loan). |
| [28](#co_fnRef_I7fdd6e01d6ee11ea8f41e1f6f2aa78) | Escrow holders “owe no duty to advise the parties on their legal rights and they have no reason to protect the rights of any one party against another.” [Gebrayel v. Transamerica Title Ins. Co., 132 Or. App. 271, 888 P.2d 83, 88 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995024062&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_88&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_88). |
| [29](#co_fnRef_I7fdd6e02d6ee11ea8f41e1f6f2aa78) | *See* [Lehman Bros. Holdings, Inc. v. Hirota, 2007 WL 1471690 (M.D. Fla. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012299274&pubNum=0000999&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that lender’s allegations that closing agent failed to disclose secondary financing of the properties, and the borrower’s excessive closing cost payments supported a claim against the closing agent for breach of closing instruction contract and Closing Protection Letter); [Julian W. Curtis Co. v. District-Realty Title Ins. Corp., 267 A.2d 830 (D.C. 1970)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1970110050&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Styrk v. Cornerstone Investments, Inc., 61 Wash. App. 463, 810 P.2d 1366 (Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991100767&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“When the required debt/appraisal ratio was not met …, the escrow agent could not close the transaction in full compliance with his instructions”); [Daniel v. Coastal Bonded Title Co., 539 So. 2d 567 (Fla. Dist. Ct. App. 5th Dist. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989009056&pubNum=0000735&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agent received survey as contracted, but did not disclose that it revealed encroachments that would have been contrary to the parties’ contract); [Bortz v. Noon, 698 A.2d 1311, 1319 (Pa. Super. Ct. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997150265&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1319&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1319), rev’d on other grounds, [556 Pa. 489, 729 A.2d 555 (1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999106470&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (agent received septic system report as contracted for, but did not disclose failing results of test to purchaser). |
| [30](#co_fnRef_I7fdd6e03d6ee11ea8f41e1f6f2aa78) | [In re Opinion No. 26 of Committee on Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344, 1362 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995071125&pubNum=0000162&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_1362&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_1362). *See also* [Allen v. Webb, 87 Nev. 261, 485 P.2d 677, 681 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971124271&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_681&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_681); [Morley v. J. Pagel Realty and Ins., 27 Ariz. App. 62, 550 P.2d 1104 (Div. 2 1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976114470&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *Accord* [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 267 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_267&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_267). The Ford court ruled that Chicago Title, acting through Guarantee, purported to behave like an attorney in examining titles and “assumed to discharge the same duties as an individual conveyancer or attorney.” Guarantee’s in-house counsel had assured the purchasers’ broker that Guarantee would take care of liens, current judgments and pending lawsuits against the record owners, i.e., Guarantee would undertake to clear title. Guarantee’s counsel also advised the broker that the “exceptions [for liens, judgments, etc. appearing in the policy] would be deleted one way or the other.” [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 259 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_259&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_259). With regard to pending lawsuits against the record owner, Guarantee’s counsel advised that the insurance commitment’s exceptions for them could be deleted by causing the pending lawsuits to be continued for 120 days (i.e., legal advice). The court concluded “[t]he former function of the buyer’s attorney in examining the abstract of title is now performed by the title insurance company’s examiner.” Because title companies now perform a service that was formerly provided by attorneys, the court imposed a standard of care on the insurer equivalent to the standard of care expected of attorneys. [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 264 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_264&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_264). |
| [31](#co_fnRef_I7fdf90e0d6ee11ea8f41e1f6f2aa78) | *See* [Bowers v. Transamerica Title Ins. Co., 100 Wash. 2d 581, 675 P.2d 193, 199–200 (1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983157091&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_199&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_199); [Andersen v. Northwest Bonded Escrows, Inc., 4 Wash. App. 754, 484 P.2d 488 (Div. 1 1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971123831&pubNum=0000661&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also supra* [§§ 13:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a1&originatingDoc=If4f5ae7a6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) for statutes and regulations adopted in Washington in response to the Bower decision. |

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2 Title Ins. Law § 20:5 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I7ff73790d6ee11ea8f41e1f6f2a)**

§ 20:5. Title companies’ duties as escrow and closing agents—Duty to disclose and inform—Duty to disclose evidence of fraud

In most jurisdictions, an escrow holder’s duty to disclose material information includes the duty to disclose fraud. Jurisdictions vary significantly, however, in what that duty entails. A Texas court has described four different positions:

Under the Restatement and in at least one state, an escrow holder’s duties are limited to the safekeeping of the escrow property and its delivery or return to the appropriate party, as the case may be, in accordance with the agreement; and, thus, entail no duty of disclosure whatever unless specified by the agreement. In at least two other states, an escrow agent has no duty to disclose unless it has actual knowledge of clear evidence of fraud. A further variation followed in at least two other states is that, although not required to investigate, an escrow agent has a duty to disclose facts that a reasonable escrow agent would perceive as evidence of fraud. Finally, at least two other jurisdictions prescribe that an escrow agent owes a duty to disclose all matters coming to the agent’s notice or knowledge concerning the subject of the agency that are material for the principal to know for his protection or guidance. [footnotes & citations omitted][1](#co_footnote_I7ff73791d6ee11ea8f41e1f6f2a)

Texas is among the last group described, applying to closing agents in real estate transactions the traditional fiduciary duty of full disclosure which “requires disclosure of all material facts known to the fiduciary that might affect the rights of the person to whom the duty is owed.”[2](#co_footnote_I7ff75ea0d6ee11ea8f41e1f6f2a)

Arizona subscribes to the third “variation,” described above, i.e., states holding an escrow agent to a duty to disclose facts that a reasonable escrow agent would perceive as evidence of fraud.[3](#co_footnote_I7ff75ea1d6ee11ea8f41e1f6f2a) The Arizona Supreme Court also held in *Burkons v. Ticor Title Insurance Co.* that an escrow agent has a duty to disclose facts and circumstances that a reasonable escrow agent would perceive as “evidence of fraud.”[4](#co_footnote_I7ff75ea2d6ee11ea8f41e1f6f2a) Burkons agreed to sell land to Pyramid in exchange for a cash down payment and a promissory note for $110,000 secured by a [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). The purchase contract also provided that (a) the escrow would include a subordination agreement prepared by Pyramid’s attorney on a form acceptable to the title company and a “[**letter of intent**](http://practicallawconnect.thomsonreuters.com/Document/I21063d8eef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) as to amounts and use,” and (b) Pyramid was not permitted to place another lien of any type on the property without the seller’s written consent.

Ticor was the escrow agent for the sale and its employee prepared escrow instructions based on the purchase contract. The escrow instructions provided that the note would be secured by a “first lien deed of trust” and that the seller would “accept and approve in writing a subordination agreement, letters of intent with financial statement.”[5](#co_footnote_I7ff785b0d6ee11ea8f41e1f6f2a) Pyramid prepared a letter of intent stating that Pyramid was formed to construct a medical complex, and that subordination of the seller’s deed of trust would be minimal, “approximately fifty percent of the selling price.”[6](#co_footnote_I7ff785b1d6ee11ea8f41e1f6f2a) This language suggested to Burkons that the loan to which he was subordinating his lien was for construction of a medical center on the land.

Pyramid obtained a $67,000 loan from Tower Acceptance and Services Corp. (“Tower”). Pyramid prepared a subordination agreement subordinating Burkons’ lien to Tower’s. Burkons signed the agreement and Ticor filled in the blanks with the specifics of the Tower loan and the Burkons lien. Ticor received the Tower loan proceeds and disbursed $24,000 for the down payment to Burkons. Approximately $20,000 of the loan proceeds was used for commissions and fees. Ticor paid the remaining $22,000 to Pyramid at the close of escrow. Ticor recorded the closing documents in the following order: “the Tower deed of trust, the Burkons deed of trust, the subordination agreement, and the letter of intent.”[7](#co_footnote_I7ff785b2d6ee11ea8f41e1f6f2a) Pyramid failed to improve the property and defaulted on its payments to Burkons. Burkons sued Ticor for breach of contract[8](#co_footnote_I7ff785b3d6ee11ea8f41e1f6f2a) and breach of fiduciary duty for its failure to disclose known fraud.[9](#co_footnote_I7ff785b4d6ee11ea8f41e1f6f2a) In support of Burkons’ breach of fiduciary duty claim, Burkons alleged that Ticor did not inform Burkons of the source of Pyramid’s down payment or the fact that the property was to be “overencumbered.”[10](#co_footnote_I7ff785b5d6ee11ea8f41e1f6f2a)

Regarding the breach of fiduciary duty claim, Ticor argued that there was no evidence of actual fraud and, therefore, Ticor had not breached the duty that the Arizona Supreme Court had recognized in *Berry v. McLeod*[11](#co_footnote_I7ff785b6d6ee11ea8f41e1f6f2a) to disclose facts concerning actual fraud of which the agent is actually aware. The court acknowledged that its decision in *Berry* did not require an escrow agent to investigate and search for fraud. “But our reading of *Berry* also leads to the conclusion that it does not permit the escrow agent to close its eyes in the face of known facts and console itself with the thought that no one has yet confessed fraud. Although not required to investigate, when the agent is aware of facts and circumstances that a reasonable escrow agent would perceive ‘as evidence of fraud,’ then there is a duty to disclose.”[12](#co_footnote_I7ff7acc0d6ee11ea8f41e1f6f2a) The court pointed out that Ticor’s employee knew before closing that the combined liens on the property were greater than the purchase price, and that the Tower loan was not going to be used for construction. The court also noted that Ticor’s employee testified that she had approached her supervisor regarding the transaction because she was concerned with the methods being used. Ticor’s internal policies prohibited transactions “where buyers are allowed to place a loan on the property which is superior to the sellers’ carry back, but allows the buyer enough money to pay the downpayment from it and the balance goes into his pocket.” Ticor had classified such loans as “outright swindle.”[13](#co_footnote_I7ff7acc1d6ee11ea8f41e1f6f2a) The court concluded:

It is impossible to say as a matter of law that a reasonable escrow agent would not perceive the over-encumbrance situation as substantial evidence of fraud in light of the internal policies of this very escrow agent. There was strong evidence that the actual facts known to Ticor raised substantial evidence of fraud. Under such circumstances, the principals set forth in *Berry* require the escrow agent to disclose the facts to the parties.[14](#co_footnote_I7ff7acc2d6ee11ea8f41e1f6f2a)

A companion case, *Manley v. Ticor Title Ins. Co.*, addressed one point not addressed by *Burkons*: whether disclosure of fraud to the seller’s real estate agent satisfied the escrow holder’s fiduciary duty to disclose.[15](#co_footnote_I7ff7acc3d6ee11ea8f41e1f6f2a) The court determined that whether Ticor fulfilled its duty to disclose depended on whether Ticor knew, at the time of disclosure, that the real estate agent had interests so adverse to the sellers that he would be unlikely to disclose such information.[16](#co_footnote_I7ff7acc4d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I7ff73790d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I7ff73791d6ee11ea8f41e1f6f2aa78) | [Home Loan Corp. v. Texas American Title Co., 191 S.W.3d 728, 731 (Tex. App. Houston 14th Dist. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2009070170&pubNum=0004644&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4644_731&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4644_731). |
| [2](#co_fnRef_I7ff75ea0d6ee11ea8f41e1f6f2aa78) | [Home Loan Corp. v. Texas American Title Co., 191 S.W.3d 728, 731 (Tex. App. Houston 14th Dist. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2009070170&pubNum=0004644&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4644_731&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4644_731). |
| [3](#co_fnRef_I7ff75ea1d6ee11ea8f41e1f6f2aa78) | [C & G Farms Inc v. First American Title Insurance Company, 2018 WL 1281847 (Ariz. Ct. App. Div. 1 2018)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2043996226&pubNum=0000999&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Berry v. McLeod, 124 Ariz. 346, 604 P.2d 610, 616 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980190379&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_616&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_616).  *See, generally*, Nagy, Note: Escrowee’s Duty to Disclose Fraud: An Expansion of the Limited Agency Doctrine, 22 Ariz. L. Rev. 1146 (1980). Nagy’s review of the Berry decision suggests that the court is “effectively forcing escrowees to act more like general agents with a corresponding duty to protect the welfare of their principals rather than allowing them to blindly follow the instructions entrusted them.” Nagy, Note: Escrowee’s Duty to Disclose Fraud: An Expansion of the Limited Agency Doctrine, 22 Ariz. L. Rev. 1146, 1151 (1980). Nagy points out that standards of conduct in the escrow industry discourage escrow business that involves dummy corporations and secret profits. Nagy praises the decision in Berry as “rais[ing] an existing ethical standard to the level of a legal standard.” Nagy, Note: Escrowee’s Duty to Disclose Fraud: An Expansion of the Limited Agency Doctrine, 22 Ariz. L. Rev. 1146, 1154 (1980).  *Compare* [Zang v. Northwestern Title Co., 135 Cal. App. 3d 159, 185 Cal. Rptr. 176, 181 (1st Dist. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982137292&pubNum=0000227&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_181&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_181) (holding that a title company acting as escrow agent was liable for its failure to follow escrow instructions and for its “negligence in allowing a fraud to be perpetrated” on a party to the escrow); [CMR Mortg. Fund II, LLC v. P. Bidda Holdings, Inc., 2007 WL 6886721 (Cal. Super. Ct. Trial Div. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019840509&pubNum=0000999&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Trial Order) (“[E]ven if as a general rule an escrow holder’s duties are limited to compliance with the escrow instructions and the escrow holder has no duty to ‘police the affairs of its depositors,’ the cases contemplate liability where there is ‘clear evidence of fraud’ or participation in a conspiracy to defraud.”); *and* [Lee v. Title Ins. & Trust Co., 264 Cal. App. 2d 160, 70 Cal. Rptr. 378 (5th Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111895&pubNum=0000227&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that an escrowee was under no duty to disclose to a buyer of real property that other parties to the escrow were defrauding him by means of a second transaction of which he was not aware).  *Compare also* [In re Johnson, 292 B.R. 821 (Bankr. E.D. Pa. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003360192&pubNum=0000164&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Resolution Trust Corp. v. American Title Ins. Co., 901 F. Supp. 1122, 1124 (M.D. La. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995210937&pubNum=0000345&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1124&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1124) (holding that a closing attorney acting as an agent for American Title had no duty to inform a lender of fraud or illegalities in the underlying loan transaction when issuing a title policy to the lender); [Scott v. Commonwealth Land Title Ins. Co., 518 So. 2d 102 (Ala. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988006157&pubNum=0000735&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  The Washington Court of Appeals concluded in the case of [Butko v. Stewart Title Co. of Washington, Inc., 99 Wash. App. 533, 991 P.2d 697 (Div. 2 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000036833&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), order for publication withdrawn, (May 5, 2000) that an escrow agent had a duty to inform all parties to the escrow when it has reasonable cause to believe that a party is committing a fraud against another party to the transaction. *See also* [Donell v. Fidelity Nat. Title Agency of Nevada, Inc., 2012 WL 1669421, \*4 (D. Nev. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027685176&pubNum=0000999&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d* (escrow agent has a limited duty to disclose fraud to parties to the escrow transaction, but has no duty to investigate). |
| [4](#co_fnRef_I7ff75ea2d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [C & G Farms Inc v. First American Title Insurance Company, 2018 WL 1281847 (Ariz. Ct. App. Div. 1 2018)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2043996226&pubNum=0000999&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I7ff785b0d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 713 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_713&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_713). |
| [6](#co_fnRef_I7ff785b1d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 713 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_713&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_713). |
| [7](#co_fnRef_I7ff785b2d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 713 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_713&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_713). |
| [8](#co_fnRef_I7ff785b3d6ee11ea8f41e1f6f2aa78) | The Arizona Supreme Court concluded, first, that the parties’ intent as to whether the subordination agreement was to be conditional upon the use of the Tower loan for construction purposes was unclear. If the parties’ intent was unclear, Ticor was obligated to obtain clarification before proceeding. “Thus, unless it should be determined from the evidence that the parties intended to give the Tower lien unconditional priority, Ticor breached its contractual obligations by giving Tower priority without obtaining clarification before proceeding.” [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 717 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_717&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_717). |
| [9](#co_fnRef_I7ff785b4d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 713–714 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_713&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_713). |
| [10](#co_fnRef_I7ff785b5d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 713–714 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_713&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_713). |
| [11](#co_fnRef_I7ff785b6d6ee11ea8f41e1f6f2aa78) | [Berry v. McLeod, 124 Ariz. 346, 604 P.2d 610 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980190379&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I7ff7acc0d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 713–714 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_713&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_713). *See also* [C & G Farms Inc v. First American Title Insurance Company, 2018 WL 1281847 (Ariz. Ct. App. Div. 1 2018)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2043996226&pubNum=0000999&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I7ff7acc1d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 719 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_719&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_719). |
| [14](#co_fnRef_I7ff7acc2d6ee11ea8f41e1f6f2aa78) | [Burkons v. Ticor Title Ins. Co. of California, 168 Ariz. 345, 813 P.2d 710, 719 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991113606&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_719&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_719). *See also* [Manley v. Ticor Title Ins. Co. of California, 168 Ariz. 568, 816 P.2d 225 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991124272&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I7ff7acc3d6ee11ea8f41e1f6f2aa78) | [Manley v. Ticor Title Ins. Co. of California, 168 Ariz. 568, 816 P.2d 225 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991124272&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The court began its discussion of this issue by stating the general rule that knowledge that an agent acquires in the course of an agency is imputed to the principal. The rule is “premised on the presumption that the agent will perform his obligation to give his principal all knowledge relevant to the principal’s protection and interest.” The presumption, however, will not prevail if the agent is expected not to perform his duty, as in the case where he is acting in his own interest. [816 P.2d at 229, 230](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991124272&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_229&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_229). The court compared the real estate agent to a salesman, concluding that most authority holds that the interest of a salesman is not in the nature of an interest that will prevent the knowledge gained from being imputed to the principal. |
| [16](#co_fnRef_I7ff7acc4d6ee11ea8f41e1f6f2aa78) | [Manley v. Ticor Title Ins. Co. of California, 168 Ariz. 568, 816 P.2d 225, 230 (1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991124272&pubNum=0000661&originatingDoc=If4f5ae7d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_230&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_230). |

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2 Title Ins. Law § 20:6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I800ce270d6ee11ea8f41e1f6f2a)**

§ 20:6. Title companies’ duties as escrow and closing agents—Duty to disclose and inform—Duty to disclose evidence of fraud—Land “Flips” or double escrow transactions

A land “flip” is a plan to sell a property twice in quick succession, with the buyer in the first transaction selling in the second transaction. A land flip involves “double closings”[1](#co_footnote_I800d0980d6ee11ea8f41e1f6f2a) and in states where real estate sales are closed through escrows would involve a “double escrow.” Not all flip or double escrow transactions are fraudulent. More than one television program popularized legitimate “property flipping”—buying run-down properties for the purpose of quickly refurbishing and re-selling at a profit—during the last real estate boom. At the same time, the same buyer purchasing low and then immediately selling for a higher price are facts common to various types of mortgage loan fraud, and may be evidence of such fraud, especially when the seller and buyer/borrower in the second transaction are connected and the transactions are back-to-back.[2](#co_footnote_I800d0981d6ee11ea8f41e1f6f2a)

In the context of a series of “double escrow” or “flip” transactions, the Nevada Supreme Court in *Mark Properties, Inc. v. National Title Company* similarly held that an escrowee is obligated to inform parties of the escrowee’s knowledge of fraud.[3](#co_footnote_I800d0982d6ee11ea8f41e1f6f2a) The Nevada court limited the duty to “disclos[ing] facts concerning actual fraud of which the agent is actually aware” and added that the escrowee is not required “to investigate circumstances surrounding a particular sale in order to discover fraud.”[4](#co_footnote_I800d0983d6ee11ea8f41e1f6f2a) The court then held that, if the escrow agents were aware that a company controlled by the grantor was acquiring the properties in another escrow at a lower price and then “flipping” the properties into escrow with the grantee for a higher price, the escrowee had a duty to so inform the grantee.

Similarly, the Arizona case of *Berry v. McLeod* involved a “flip” or “double escrow” transaction, i.e., back-to-back escrows where the purchaser was making a substantial profit on the property upon resale. A local agency of Stewart Title was acting as escrow agent for each transaction. The *Berry* court stated:

Generally, there is no duty to disclose information received by an escrow agent unless such a duty is required by the terms of the agreement, but we hold that there is an exception to the foregoing rule when the escrow agent knows that a fraud is being committed on a party to an escrow and the failure of the escrow agent to disclose the information of the fraud will assist in accomplishing the fraud; under such conditions the escrow agent has a duty to disclose the facts actually known.[5](#co_footnote_I800d3090d6ee11ea8f41e1f6f2a)

California courts have rejected a duty of the escrowee to disclose mere suspicions of fraud, and require disclosure only when an escrowee has actual knowledge of clear evidence of fraud.[6](#co_footnote_I800d3091d6ee11ea8f41e1f6f2a) In *Lee v. Title Insurance & Trust Co.*, a California appellate court held that the escrow holder was under no duty to disclose to a buyer of real property that other parties to the escrow were defrauding him by means of a second transaction of which he was unaware.[7](#co_footnote_I800e9020d6ee11ea8f41e1f6f2a) The court concluded that an escrow holder should not be liable for failing to do something that the escrow instructions did not require,[8](#co_footnote_I800e9021d6ee11ea8f41e1f6f2a) and that the loss from fraud should fall on the parties to the real estate transaction rather than the escrowee.[9](#co_footnote_I800e9022d6ee11ea8f41e1f6f2a) The Nevada Supreme Court, in *Mark Properties*, discussed *supra* expressly rejected this reasoning as overly protective of escrow companies. The Nevada and Arizona courts only ask escrow agents to provide the same disclosure that some title insurance underwriters require them to provide as title insurance agents: “when a double escrow is detected, the recommended practice for years has been to require full disclosure of the terms of each escrow to all parties—including lenders—in writing.”[10](#co_footnote_I800eb730d6ee11ea8f41e1f6f2a)

If one title insurance agency handles both escrows, principles of agency law alone might require disclosure of the existence of conflicting agency relationships.

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| **Footnotes** | |
| [\*](#co_fnRef_I800ce270d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I800d0980d6ee11ea8f41e1f6f2aa78) | [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 409, 410 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_409&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_409), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I800d0981d6ee11ea8f41e1f6f2aa78) | *See* J. Bushnell Nielsen, Title and Escrow Claims Guide 2nd Ed., § 13.9.3; Dunlevy, Title and Mortgage Fraud, in ABA Tort & Insurance Practice Section, Title Insurance Litigation Committee Newsletter (Winter 1996). *See generally* [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2015 WL 5276346 (N.D. Ill. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037139620&pubNum=0000999&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. First American Title Ins. Co., 2014 WL 1271227 (Mich. Ct. App. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2032990490&pubNum=0000999&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in N.W.2d*. (holding property flipping schemes were evidence of closing agents’ fraud, but no indemnifiable loss occurred since lender bid amount of the debt when foreclosing). |
| [3](#co_fnRef_I800d0982d6ee11ea8f41e1f6f2aa78) | [Mark Properties, Inc. v. National Title Co., 116 Nev. 1158, 14 P.3d 507 (2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000647759&pubNum=0004645&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), opinion withdrawn and superseded on other grounds on reh’g, [117 Nev. 941, 34 P.3d 587 (2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001473116&pubNum=0004645&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), opinion reinstated on reh’g, (Nov. 26, 2001). *See also* [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*1 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding contributory negligence of lender did not reduce Chicago Title’s liability found by jury earlier in this case for breach of fiduciary duty, negligence or negligent misrepresentation in failing to disclose evidence of same-day flip transactions with different prices) and facts recited in [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2015 WL 5276346 (N.D. Ill. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037139620&pubNum=0000999&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I800d0983d6ee11ea8f41e1f6f2aa78) | The court remanded the case to the trial court for a determination of whether the escrow agents were aware that a company controlled by the grantor was acquiring the properties in another escrow at a lower price and then “flipping” the properties into escrow with the grantee for a higher price. [Mark Properties, Inc. v. National Title Co., 116 Nev. 1158, 14 P.3d 507 (2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000647759&pubNum=0004645&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), opinion withdrawn and superseded on other grounds on reh’g, [117 Nev. 941, 34 P.3d 587 (2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001473116&pubNum=0004645&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), opinion reinstated on reh’g, (Nov. 26, 2001). *See also* [Bergin Financial, Inc. v. First American Title Co., 2008 WL 268823 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014995309&pubNum=0000999&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [397 Fed. Appx. 119 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (ruling that the mortgage lender had presented no evidence to support its claims that the title insurance underwriter or its policy-issuing agents had knowledge of flip schemes or made misrepresentations about the borrowers’ creditworthiness or the real estate’s collateral value). |
| [5](#co_fnRef_I800d3090d6ee11ea8f41e1f6f2aa78) | [Berry v. McLeod, 124 Ariz. 346, 604 P.2d 610, 616 (1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980190379&pubNum=0000661&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_616&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_616). |
| [6](#co_fnRef_I800d3091d6ee11ea8f41e1f6f2aa78) | [Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co., 27 Cal. 4th 705, 27 Cal. 4th 1160a, 117 Cal. Rptr. 2d 541, 41 P.3d 548, 552 (2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002166822&pubNum=0004645&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_552&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_552), as modified on denial of reh’g, (May 15, 2002); [Gordon v. D & G Escrow Corp., 48 Cal. App. 3d 616, 122 Cal. Rptr. 150 (2d Dist. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lee v. Title Ins. & Trust Co., 264 Cal. App. 2d 160, 70 Cal. Rptr. 378 (5th Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111895&pubNum=0000227&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Blackburn v. McCoy, 1 Cal. App. 2d 648, 37 P.2d 153, 155–56 (2d Dist. 1934)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1934121017&pubNum=0000661&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_155&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_155). *See also* Jacobsen, Comment: California Escrow Agents: A Duty to Disclose Known Fraud?, 17 Pac. L.J. 309, 323 (1985). |
| [7](#co_fnRef_I800e9020d6ee11ea8f41e1f6f2aa78) | [Lee v. Title Ins. & Trust Co., 264 Cal. App. 2d 160, 70 Cal. Rptr. 378 (5th Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111895&pubNum=0000227&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Plaintiffs alleged that the escrow holder failed to inform them that the $135,000 first trust deed against the real property that they purchased secured only a $100,000 loan. |
| [8](#co_fnRef_I800e9021d6ee11ea8f41e1f6f2aa78) | [Lee v. Title Ins. & Trust Co., 264 Cal. App. 2d 160, 70 Cal. Rptr. 378, 380 (5th Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111895&pubNum=0000227&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_380&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_380). |
| [9](#co_fnRef_I800e9022d6ee11ea8f41e1f6f2aa78) | [Lee v. Title Ins. & Trust Co., 264 Cal. App. 2d 160, 70 Cal. Rptr. 378, 380 (5th Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111895&pubNum=0000227&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_380&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_380). The court reasoned:  [U]nder the proposed rule, once an escrow holder received information (from whatever source) he would be forced to decide independently whether to believe the information and disclose it or disbelieve it and conceal his knowledge. If he concealed his knowledge he would risk suit. If he discloses and the information is inaccurate, he may be sued by all parties to the escrow for interfering with their contract. Establishing a rule which would create such a dilemma and subject the escrow holder to a high risk of litigation would damage a valuable business procedure. Manifestly, [plaintiff’s] contention, if adopted by judicial fiat, would effectively discourage a reasonable and prudent man or company from acting as an escrow holder and would ultimately defeat the very purpose for which escrows originated. |
| [10](#co_fnRef_I800eb730d6ee11ea8f41e1f6f2aa78) | *See e.g.*, First American Title Insurance Company, *LandSakes*, p. 1–2 (9/28/1998): “The classic double escrow occurs when the escrow or closing officer is aware that property is to be acquired and immediately re-sold. Double escrows suggest fraud either against the initial seller, the ultimate buyer, or the lender to the ultimate buyer.” “[M]ost courts have ruled that even if the agency is limited, there is still an obligation to disclose that which affects the transaction to each of the parties,” necessitating that “the agent advise the principals that another escrow or closing exists, but not the facts involved.” First American Title Insurance Company, *LandSakes*, p. 3 (9/28/1998).  First American Title Insurance Company, *LandSakes*, p. 1 (5/17/1999): The problem with “double escrows, or back-to-back closings, is that they may be an indication of fraud. There may be fraud against the seller, who has been induced to sell for an unfairly low price; fraud against the buyer, who may be paying too much; or fraud against the lender, who may be loaning too much.”  First American Title Insurance Company, *LandSakes*, p. 1 (4/14/2000): “What should raise red flags is when the second transaction (the flip) is completed at a substantially higher price than the first. And the closer in time the two transactions take place, the more suspect is the flip.”  First American Title Insurance Company, *LandSakes*, p. 3 (1/23/2002): “An escrow agent should always disclose the presence of a double escrow in writing to the parties to both escrows …. If an escrow agent is aware of a price differential or proposed use of funds from the second escrow to finance the closing of the first escrow, these facts should also be disclosed in writing to the parties.”  [Bank of America, NA v. First American Title Ins. Co., 2014 WL 1271227, \*10 (Mich. Ct. App. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2032990490&pubNum=0000999&originatingDoc=If4f5ae806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in N.W.2d.*:  [I]n underwriting alerts sent to its issuing agents, First American warned that double escrow situations like those at issue here “suggest fraud—either against the initial seller, the ultimate buyer, or the lender to the ultimate buyer.” While First American’s underwriting alerts about double escrow transactions do not prove that Patriot acted fraudulently or dishonestly here, the alerts are evidence from which it may be inferred that Patriot had reason to know that the transactions were fraudulent. |

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2 Title Ins. Law § 20:7 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I801baf80d6ee11ea8f41e1f6f2a)**

§ 20:7. Title companies’ duties as escrow and closing agents—Duty to disclose and inform—Disclosure of regulated title insurance rate

Perhaps it should go without saying that title insurance companies may have a duty to disclose the appropriate rates for the title insurance policies they order in a purchase or loan transaction. The U.S. District Court for the Northern District of Ohio has recognized causes of action for fraud, failure to disclose, breach of an implied contract, and breach of the implied covenant of good faith and fair dealing where mortgagors alleged that the title insurance underwriter charged the full rate for an original [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) in refinancing transactions, rather than the state-mandated reissue or refinance rate.[1](#co_footnote_I801baf81d6ee11ea8f41e1f6f2a) The court held that mortgagors properly pled claims for fraud and failure to disclose because a jury could reasonably decide that the underwriter breached a duty to disclose that the mortgagors were entitled to the reissue rate rather than the full rate that the underwriter represented mortgagors owed.[2](#co_footnote_I801baf82d6ee11ea8f41e1f6f2a) The court also held that the mortgagors properly alleged the existence of an implied contract to pay a premium for the underwriter’s provision of title insurance to their mortgagees, and that an implied term of that contract was that the underwriter would charge the legal rate for provision of that insurance.[3](#co_footnote_I801bd690d6ee11ea8f41e1f6f2a)

Title insurers’ charging more than the re-finance or re-issue rate has *not*, however, been found to be a violation of the Real Estate Settlement Procedures Act. Cases reaching this conclusion are discussed and cited in Chapter 21 of this treatise. Further, [§ 18:26](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a26&originatingDoc=If4f5ae836fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this book considers other actions brought by insureds for title insurers charging more for title insurance than the rate on file with state regulators.

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| **Footnotes** | |
| [\*](#co_fnRef_I801baf80d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I801baf81d6ee11ea8f41e1f6f2aa78) | [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158 (N.D. Ohio, 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=If4f5ae836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I801baf82d6ee11ea8f41e1f6f2aa78) | [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158, \*3 (N.D. Ohio 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=If4f5ae836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I801bd690d6ee11ea8f41e1f6f2aa78) | [Davis v. Lawyers Title Ins. Corp., 2007 WL 782158, \*2 (N.D. Ohio 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011710424&pubNum=0000999&originatingDoc=If4f5ae836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:8 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I80254c70d6ee11ea8f41e1f6f2a)**

§ 20:8. Title companies’ duties as escrow and closing agents—Duty to disclose and inform—Disclosure of affiliation of real estate settlement service providers

In addition to the common-law duties discussed in this section, Congress has imposed certain duties of disclosure upon escrow and closing agents through the Real Estate Settlement Procedures Act (RESPA).[1](#co_footnote_I80257380d6ee11ea8f41e1f6f2a) [Sections 21:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a1&originatingDoc=If4f5ae866fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *infra* fully examine the application to title agents and title insurance underwriters of RESPA’s disclosure requirements regarding affiliated business relationships, as well as RESPA’s prohibition of referral fees. RESPA also requires closing agents in residential real estate transactions to disclose their good-faith estimate of closing costs and provide a HUD-1 settlement statement disclosing all of the charges imposed on the sellers and the buyers in connection with the real estate transaction.[2](#co_footnote_I80257382d6ee11ea8f41e1f6f2a) Further discussion of HUD-1 disclosure requirements is beyond the scope of this treatise.

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| **Footnotes** | |
| [\*](#co_fnRef_I80254c70d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I80257380d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. §§ 2601](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2601&originatingDoc=If4f5ae866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [2617](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2617&originatingDoc=If4f5ae866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I80257382d6ee11ea8f41e1f6f2aa78) | *See, generally*, [Jefmor, Inc. v. Chicago Title Ins. Co., 839 S.W.2d 161 (Tex. App. Fort Worth 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992183226&pubNum=0000713&originatingDoc=If4f5ae866fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (dealing with title company’s completion of a HUD-1 settlement statement); Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Edition. |

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2 Title Ins. Law § 20:9 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I803af750d6ee11ea8f41e1f6f2a)**

§ 20:9. Title companies’ duties as escrow and closing agents—Preparation/acquisition of documents

A title insurance company’s acquisition of documents and preparation of instruments of conveyance for real estate transactions raise two sets of issues. The first issue is whether title companies’ preparation of instruments of conveyance violates states’ rules against the unauthorized practice of law. Many states permit title company employees to fill in the blanks of “simple” documents, but prohibit them from drafting “complex” documents. The case law examining this distinction is considered in §§ [13:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a11&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [13:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a12&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. Where preparation of deeds, mortgages, and other instruments of conveyance is considered the practice of law, title company employees who perform those tasks are held to the standard of a competent attorney. “The duties of an attorney practicing law are also the duties of one who without a license attempts to practice law.”[1](#co_footnote_I803af753d6ee11ea8f41e1f6f2a)

A title insurance company’s preparation of escrow instructions generally is not considered to be the unauthorized practice of law. Writing escrow instructions usually involves only memorializing statements of the principals. “Escrow instructions, unlike deeds, promissory notes, mortgages and subordination agreements, generally do not create legal rights and responsibilities in the parties. [I]f an agent in his preparation of escrow instructions does create legal rights and obligations, he may not escape the standard of care applicable to the practice of law simply by labeling the document ‘escrow instructions.’ ”[2](#co_footnote_I803b1e60d6ee11ea8f41e1f6f2a) *See* §§ [13:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a11&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [13:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a12&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

The second issue involves an escrow holder’s duty to prepare documents in accordance with the principals’ instructions.[3](#co_footnote_I803b1e63d6ee11ea8f41e1f6f2a) This is simply an application of the escrowee’s general duty of strict compliance with escrow instructions.[4](#co_footnote_I803b4570d6ee11ea8f41e1f6f2a) For example, in *Edwards v. Stewart Title & Trust*,[5](#co_footnote_I803b4572d6ee11ea8f41e1f6f2a) the Edwards agreed to sell a home to the purchaser under an [**installment land contract**](http://practicallawconnect.thomsonreuters.com/Document/If98a85581c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). The escrow instructions included the following clause: “NOTE: In the event of the death of the Buyer prior to payment in full of the Note and [**Deed of Trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to Seller, the Buyer directs that his property is to revert to the Sellers or in the event of their death, to their daughter….”[6](#co_footnote_I803b4573d6ee11ea8f41e1f6f2a) The deed the title company prepared made no mention of a reversionary interest in the Edwards or their daughter. Two years later the purchaser sold the property. Because the deed did not mention the Edwards’ reversionary interest, this purchaser was a *bfp* without notice and took free of it under Arizona law.[7](#co_footnote_I803c7df0d6ee11ea8f41e1f6f2a) The court held the title company liable for breach of contract for failing to include the Edwards’ future interest in the deed that it prepared.[8](#co_footnote_I803ca500d6ee11ea8f41e1f6f2a)

In addition to liability for failing to prepare documents in accordance with the principals’ instructions, a failure to obtain or deliver documents called for in the escrow instructions also is a breach of the escrowee’s contract.[9](#co_footnote_I803ca501d6ee11ea8f41e1f6f2a) Thus, where the purchase agreement provided that the buyer would give the seller two notes for the purchase price, secured by deeds of trust, and the title company failed to obtain and record one of the deeds of trust, the title company breached its fiduciary duty.[10](#co_footnote_I803ca502d6ee11ea8f41e1f6f2a)

A title insurance agent or approved attorney’s failure to obtain necessary documents also may trigger a claim against the title insurance underwriter, if the underwriter issued a Closing Protection Letter to the title insurance applicant. See *infra* §§ [20:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a15&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) examining title insurers’ liability for agents’ acts pursuant to Closing Protection Letters. Whether a title insurance company has liability when the grantee would not have closed the escrow but for the title company’s failure to discover and disclose recorded instruments is discussed in [§§ 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

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| **Footnotes** | |
| [\*](#co_fnRef_I803af750d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I803af753d6ee11ea8f41e1f6f2aa78) | *See* [Allen v. Webb, 87 Nev. 261, 485 P.2d 677 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971124271&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that escrow agents who acted the part of a lawyer in preparing documents owed duty to owners of deed of trust to record documents or advise owners when they did not record documents); [Askew v. Allstate Title & Abstract Co., Inc., 603 So. 2d 29, 31 (Fla. Dist. Ct. App. 2d Dist. 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992128066&pubNum=0000735&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_31&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_31); [Andersen v. Northwest Bonded Escrows, Inc., 4 Wash. App. 754, 484 P.2d 488, 491 (Div. 1 1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971123831&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_491&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_491) (holding that the preparation of a promissory note, warranty deed, mortgage, and escrow instructions constituted the practice of law). The Anderson court stated that the practice of law includes preparation of legal instruments and contracts by which legal rights are secured. [484 P.2d at 491, n.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971123831&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_491&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_491). The court reasoned that escrow companies’ actions “cannot be differentiated from those which would have been rendered in a law office by a practicing attorney.” [484 P.2d at 491](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971123831&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_491&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_491).  *See, generally,* [Bowers v. Transamerica Title Ins. Co., 100 Wash. 2d 581, 675 P.2d 193, 198 (1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983157091&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_198&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_198) (holding that the title company was liable for negligence when it failed to advise the Bowers of the pitfalls of receiving an unsecured note); [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 264 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_264&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_264) (holding that, because title companies now perform a service that was formerly provided by attorneys, their standard of care is equivalent to the standard of care expected of attorneys). |
| [2](#co_fnRef_I803b1e60d6ee11ea8f41e1f6f2aa78) | *See* [Pope v. Savings Bank of Puget Sound, 850 F.2d 1345, 1350, 11 Fed. R. Serv. 3d 1063 (9th Cir. 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988086505&pubNum=0000350&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_1350&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1350) (holding that a bank’s preparation of escrow instructions did not constitute the practice of law). |
| [3](#co_fnRef_I803b1e63d6ee11ea8f41e1f6f2aa78) | *See* [Franklin v. Oklahoma City Abstract & Title Co., 584 F.2d 964, 969–970 (10th Cir. 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978120537&pubNum=0000350&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_969&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_969) (holding that whether a mistake in the legal description in a mortgage drafted by the title company escrow agent constituted negligence raised an issue of fact for the jury); [Jefmor, Inc. v. Chicago Title Ins. Co., 839 S.W.2d 161 (Tex. App. Fort Worth 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992183226&pubNum=0000713&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (dealing with company’s completion of a HUD-1 settlement statement); [Edwards v. Stewart Title & Trust of Phoenix, Inc., 156 Ariz. 531, 753 P.2d 1187, 1190 (Ct. App. Div. 2 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988043085&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1190&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1190); [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 457 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_457&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_457); [Kish v. Bay Counties Title Guaranty Co., 254 Cal. App. 2d 725, 62 Cal. Rptr. 494, 500 (1st Dist. 1967)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1967111529&pubNum=0000227&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_500&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_500); [Askew v. Allstate Title & Abstract Co., Inc., 603 So. 2d 29, 31 (Fla. Dist. Ct. App. 2d Dist. 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992128066&pubNum=0000735&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_31&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_31) (“It is well-established that a title insurance company acting as a closing agent has the duty to supervise a closing in a ‘reasonably prudent manner.’ ”). |
| [4](#co_fnRef_I803b4570d6ee11ea8f41e1f6f2aa78) | *See* [Old Republic Nat. Title Ins. Co. v. Apache Title Agency, Inc., 152 F.3d 928 (9th Cir. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998105181&pubNum=0000506&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding negligence where escrow agent failed to include accurate land description in trust deed); [Askew v. Allstate Title & Abstract Co., Inc., 603 So. 2d 29, 31 (Fla. Dist. Ct. App. 2d Dist. 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992128066&pubNum=0000735&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_31&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_31); [Lindstrand v. Transamerica Title Ins. Co., 127 Or. App. 693, 874 P.2d 82 (1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994102597&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding escrow agent liable for supplying incorrect restrictive covenant); [Ivy v. Transamerica Title Ins. Co., 90 Or. App. 511, 752 P.2d 1269 (1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988051811&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (failing to use correct legal description is negligence). The subordination clause in the purchase contract in Askew v. Allstate Title & Abstract Co., Inc. provided for subordination of the seller’s lien to “a present or future senior encumbrance” (singular), while the language the title company prepared subordinated the seller’s lien to “any present or future encumbrances” (plural). The court stated that the provision no longer had the same effect as the provision agreed to by the seller. [Askew v. Allstate Title & Abstract Co., Inc., 603 So. 2d 29, 31 (Fla. Dist. Ct. App. 2d Dist. 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992128066&pubNum=0000735&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_31&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_31). *See also* [TierOne Bank v. U.S. Money Source, Inc., 2007 WL 2904187 (D. Neb. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013462630&pubNum=0000999&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding mortgage originator/closing agent liable to lender under breach of contract, negligent misrepresentation, and negligence for failing to ensure a valid first lien on the real estate and failing to supply eligible notes and sell the loans to third-party investors); [Garton v. Title Ins. & Trust Co., 106 Cal. App. 3d 365, 165 Cal. Rptr. 449, 457 (3d Dist. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980112427&pubNum=0000227&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_457&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_457) (discussed [§ 20:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a4&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))); [Kish v. Bay Counties Title Guaranty Co., 254 Cal. App. 2d 725, 62 Cal. Rptr. 494, 500 (1st Dist. 1967)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1967111529&pubNum=0000227&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_500&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_500) (finding title company liable for breach of escrow instructions where title company failed to prepare a security device called for in instructions). |
| [5](#co_fnRef_I803b4572d6ee11ea8f41e1f6f2aa78) | [Edwards v. Stewart Title & Trust of Phoenix, Inc., 156 Ariz. 531, 753 P.2d 1187, 1190 (Ct. App. Div. 2 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988043085&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1190&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1190). |
| [6](#co_fnRef_I803b4573d6ee11ea8f41e1f6f2aa78) | The escrow instructions also required the escrow agent to “file for record in the appropriate public office all necessary documents required to be filed or recorded.” [753 P.2d at 1188](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988043085&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1188&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1188). |
| [7](#co_fnRef_I803c7df0d6ee11ea8f41e1f6f2aa78) | [Edwards v. Stewart Title & Trust of Phoenix, Inc., 156 Ariz. 531, 753 P.2d 1187, 1189 (Ct. App. Div. 2 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988043085&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1189&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1189). |
| [8](#co_fnRef_I803ca500d6ee11ea8f41e1f6f2aa78) | [Edwards v. Stewart Title & Trust of Phoenix, Inc., 156 Ariz. 531, 753 P.2d 1187, 1190 (Ct. App. Div. 2 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988043085&pubNum=0000661&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1190&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1190). |
| [9](#co_fnRef_I803ca501d6ee11ea8f41e1f6f2aa78) | *See* [Banville v. Schmidt, 37 Cal. App. 3d 92, 112 Cal. Rptr. 126, 135 (3d Dist. 1974)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1974103676&pubNum=0000227&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_135&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_135); [Common Wealth Ins. Systems, Inc. v. Kersten, 40 Cal. App. 3d 1014, 115 Cal. Rptr. 653, 15 U.C.C. Rep. Serv. 133 (4th Dist. 1974)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1974104048&pubNum=0000227&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that a title company’s failure to examine a purported affidavit deposited in escrow constituted negligence where the escrow called for an affidavit verifying stock ownership); [Boatright v. Texas American Title Co., 790 S.W.2d 722, 728 (Tex. App. El Paso 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990066322&pubNum=0000713&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_728&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_728), writ dismissed, (Sept. 6, 1990). *But see* [Shine v. Commonwealth Land Title Co. of Houston, 1996 WL 134962 (Tex. App. San Antonio 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996077770&pubNum=0000999&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Nov. 15, 1996) (holding that a title company conducting a refinancing transaction was not liable for failing to obtain a deed where a deed was not required for closing, and no request for a deed was made). |
| [10](#co_fnRef_I803ca502d6ee11ea8f41e1f6f2aa78) | [Boatright v. Texas American Title Co., 790 S.W.2d 722, 728 (Tex. App. El Paso 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990066322&pubNum=0000713&originatingDoc=If4f5ae896fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_728&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_728), writ dismissed, (Sept. 6, 1990). The purchase agreement in Boatright provided that the purchaser would pay for the property $33,000 in cash together with two notes, one in the amount of $63,200 and one in the amount of $36,025. The agreement provided further that the notes would be secured by deeds of trust. At closing, a deed of trust for the $63,200 note was executed and recorded. The deed of trust for the $36,025 note was never recorded, unbeknownst to the sellers. The purchasers defaulted on the $36,025 note and the sellers hired an attorney to begin foreclosure. The attorney attempted to divest the purchasers of title through a trustee’s sale provision contained in the unrecorded deed of trust. The sale was ineffective. The sellers sued the title company for negligence. An escrow officer for Texas American admitted that part of her responsibility as an escrow officer is to ensure that she has the proper deeds of trusts securing the notes involved. |

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2 Title Ins. Law § 20:10 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I80502d00d6ee11ea8f41e1f6f2a)**

§ 20:10. Title companies’ duties as escrow and closing agents—Recordation

In keeping with the general rule that an escrow agent breaches its contract and its fiduciary duty if it fails to comply with escrow instructions, a title company which contracts to serve as escrow agent will be liable for failing to record a document in contravention of escrow instructions calling for its recordation.[1](#co_footnote_I80502d01d6ee11ea8f41e1f6f2a) A title company similarly will be liable to a party to an escrow if it records documents in a manner that deprives that party of the title or lien status provided in the escrow instructions.[2](#co_footnote_I80505410d6ee11ea8f41e1f6f2a)

When the title insurance agent’s only contract is to issue a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), jurisdictions have taken different positions on whether the agent’s handling escrow and closing for the transaction are (a) merely part of the contract to issue title insurance or (b) the assumption of additional duties for which the agent is separately responsible. Courts seeing the title insurance agent’s escrow and closing services as merely part of issuing an insurance policy hold that the agent and underwriter only have liability if an escrow or closing error or omission results in a loss the insurance policy covers.[3](#co_footnote_I80505411d6ee11ea8f41e1f6f2a) Many other courts, however, hold that even in the absence of express escrow instructions, a title insurance agent serving as escrow or closing agent may breach its duty by failing to record instruments if recording is part of the normal duties of escrow or closing agents in the region.

Not only did the escrow instructions state that Title Insurance was to record all papers, the normal exigencies of the situation called for them to do so. The act of recording is in their line of business—a normal part of their duties, not an exception. Part of the expectancies of ordinary laymen … is that the escrow agent will record the necessary documents.[4](#co_footnote_I80505412d6ee11ea8f41e1f6f2a)

In addition to liability for failing to follow express escrow instructions and normal escrow practices, a title company has been held liable in negligence for recording a document that is facially invalid or defective.[5](#co_footnote_I80505413d6ee11ea8f41e1f6f2a) In *Seeley v. Seymour*, the parties had entered into negotiations for the lease of Seeley’s property to Seymour.[6](#co_footnote_I80505414d6ee11ea8f41e1f6f2a) Seeley wrote a letter to Seymour’s broker detailing the provisions he would require prior to entering a binding lease agreement. Seymour wrote on the bottom “Agreed and accepted,” signed and dated the letter, and mailed it back. Seeley understood the letter to be a signal to proceed with negotiations. Seymour, on the contrary, prepared a document entitled “Memorandum of Agreement” which set forth the terms of an asserted [**ground lease**](http://practicallawconnect.thomsonreuters.com/Document/I4cf86d58ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) between them and, without Seeley’s signature or knowledge, asked Safeco Title Insurance Company [“Safeco”] to record it. The negotiations between Seeley and Seymour then ceased. Two years later, Seeley agreed to give a group of investors an option to purchase the property. The investors declined to proceed until the Seymour memorandum was released. Seeley sued Seymour and also sued Safeco for negligence and slander of title.

The Court found that Safeco had assumed a duty of care toward Seeley because Safeco’s act was intended to affect Seeley and harm to Seeley was foreseeable because the lease was void on its face.[7](#co_footnote_I80507b20d6ee11ea8f41e1f6f2a) The Court accordingly held that the title company’s recordation of the invalid [**memorandum of lease**](http://practicallawconnect.thomsonreuters.com/Document/I0f9fe848ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) could give rise to an action for slander of title.[8](#co_footnote_I80507b21d6ee11ea8f41e1f6f2a) Regarding Seeley’s negligence claim, the Court held that Safeco could be held liable to Seeley for negligently recording the lease, even though Safeco acted as a mere messenger in transmitting the document to the county recorder’s office. The Court commented that because of title companies’ pervasive effect on the economic life of California residents, “it is important that they be held accountable when their negligent acts result in economic harm to individual property interests.”[9](#co_footnote_I80507b22d6ee11ea8f41e1f6f2a)

Most cases have held that the duty of a title insurance company acting as escrow agent to follow escrow instructions and its duty to perform standard escrow practices with due care encompass the duty to properly record and refrain from improperly recording documents involved in an escrow or closing. The *Seeley* Court took this one step further. *Seeley* extended a title company’s liability for proper recordation of documents even when the title company was not acting as escrow, closing or title insurance agent for the real estate transaction.

Thus, a title insurance company will want to ensure that any documents it submits for recordation are properly recorded, even when it is only recording as a professional courtesy for another title company and not serving as escrow or title insurance agent in the underlying real estate transaction. Nevertheless, a title agent is not as likely to be liable for negligent recording if the document recorded is not facially invalid. In *Centurion Properties III, LLC v. Chicago Title Ins. Co.*, Chicago Title was the trustee under a [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and Chicago Title recorded it for the lender.[10](#co_footnote_I80507b23d6ee11ea8f41e1f6f2a) The deed of trust prohibited additional liens on the property without the lender’s permission. Chicago Title later recorded four more liens on the property for others. When the lender declared default and foreclosed, the borrower sued, alleging Chicago Title knew the deed of trust prohibited additional liens and was negligent in recording them. The Washington Supreme Court held that, where a title insurer presented facially valid instruments on a lender’s behalf to a county recording office, the title company owed no duty of care to a third-party such as the borrower.[11](#co_footnote_I8050a230d6ee11ea8f41e1f6f2a) The court explained, in part, that “When facially valid instruments are at issue, justice supports placing liability on the parties to those instruments.”[12](#co_footnote_I8050a231d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I80502d00d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I80502d01d6ee11ea8f41e1f6f2aa78) | *See* [Lawyers Title Ins. Corp. v. Pokraka, 595 N.E.2d 244, 248 (Ind. 1992)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1992120020&pubNum=0000578&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_578_248&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_578_248); [Allen v. Webb, 87 Nev. 261, 485 P.2d 677, 681 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971124271&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_681&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_681); [Edwards v. Stewart Title & Trust of Phoenix, Inc., 156 Ariz. 531, 753 P.2d 1187, 1190 (Ct. App. Div. 2 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988043085&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1190&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1190) (finding breach of duty where escrow instructions required the escrow agent to “file for record in the appropriate public office all necessary documents required to be filed or recorded.”); [Bear Creek Planning Com. v. Title Ins. & Trust Co., 164 Cal. App. 3d 1227, 211 Cal. Rptr. 172, 180 (3d Dist. 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985110306&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_180&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_180) (disapproved of on other grounds by, [Bay Development, Ltd. v. Superior Court, 50 Cal. 3d 1012, 269 Cal. Rptr. 720, 791 P.2d 290 (1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990086638&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))). |
| [2](#co_fnRef_I80505410d6ee11ea8f41e1f6f2aa78) | [Ruth v. Lytton Sav. & Loan Ass’n of Northern Cal., 266 Cal. App. 2d 831, 72 Cal. Rptr. 521, 529 (1st Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968112226&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_529&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_529), opinion corrected on other grounds, [272 Cal. App. 2d 24, 76 Cal. Rptr. 926 (1st Dist. 1969)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1969112025&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and (disapproved of on other grounds by, [Hatch v. Collins, 225 Cal. App. 3d 1104, 275 Cal. Rptr. 476 (1st Dist. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990170381&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) (holding that a title company was liable for recording the seller’s deeds of trusts in a second position to the lender’s deed of trust in violation of the seller’s escrow instructions); [New West Federal Sav. and Loan Ass’n v. Guardian Title Co. of Utah, 818 P.2d 585, 589–590 (Utah Ct. App. 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991164149&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_589&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_589) (holding that a title company was liable for negligence when it recorded a lender’s deed of trust without checking the public records for prior liens and when the escrow instructions called for the securing of the lender’s deed of trust as a first and paramount lien). *See also* [Sanders v. Park Towne, Ltd., 2 Kan. App. 2d 313, 578 P.2d 1131, 1135 (1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978109570&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1135&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1135) (holding a title company escrow agent liable for breach of its fiduciary duty when its employee recorded a sellers’ mortgage in a manner that deprived the sellers of second lien status). The Sanders Court commented: “When [the title company] undertook to act for all the parties [it] undertook to do so impartially. [Its] choice of recording sequence favored the [purchasers] at the expense of the [sellers].” [Sanders v. Park Towne, Ltd., 2 Kan. App. 2d 313, 578 P.2d 1131, 1135 (1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978109570&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1135&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1135). |
| [3](#co_fnRef_I80505411d6ee11ea8f41e1f6f2aa78) | [E.C.I. Financial Corp. v. First American Title Ins. Co. of New York, 121 A.D.3d 833, 995 N.Y.S.2d 100 (2d Dep’t 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2034610063&pubNum=0000602&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I80505412d6ee11ea8f41e1f6f2aa78) | [Allen v. Webb, 87 Nev. 261, 485 P.2d 677, 678 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971124271&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_678&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_678) (holding a title company liable for its failure to record a deed of trust in accordance with the escrow instructions). In Allen v. Webb, the Nevada Supreme Court noted that the title company had knowledge and expertise in handling real estate transactions and its superior knowledge arising from such expertise obligated it to record or advise its clients when it failed to do so. *See also* [DeWitt Bros Homes, Inc. v. National Title Resources Corp., 1996 WL 278230 (Minn. Ct. App. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996122940&pubNum=0000999&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“National agreed, as the settlement agent, to file the conveyance documents and pay the property taxes…. Even if National did not owe a duty … in the first instance, it undertook a duty to properly record the documents and pay the property taxes.”). |
| [5](#co_fnRef_I80505413d6ee11ea8f41e1f6f2aa78) | [Seeley v. Seymour, 190 Cal. App. 3d 844, 237 Cal. Rptr. 282, 290–291 (1st Dist. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987039330&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_290). |
| [6](#co_fnRef_I80505414d6ee11ea8f41e1f6f2aa78) | [Seeley v. Seymour, 190 Cal. App. 3d 844, 237 Cal. Rptr. 282 (1st Dist. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987039330&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I80507b20d6ee11ea8f41e1f6f2aa78) | [Seeley v. Seymour, 190 Cal. App. 3d 844, 237 Cal. Rptr. 282 (1st Dist. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987039330&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  Although Safeco presented the instrument for recordation as an accommodation, the evidence strongly demonstrated that the relationship between Safeco and the County Recorder as well as the circumstances under which the memorandum was presented, gave the appearance that Safeco had given its imprimatur to the document…. Safeco gave the document an aura of presumptive validity, thereby dramatically increasing the likelihood that the document would not be given normal scrutiny by the Recorder. |
| [8](#co_fnRef_I80507b21d6ee11ea8f41e1f6f2aa78) | Safeco argued that it was not liable for slander of title because the memo was void on its face and therefore, it was not a “cloud” on Seeley’s title. The Court determined that a slander of title action did not require a “legal cloud” on title. The Court stated, “[I]t is the reasonably foreseeable effect upon prospective purchasers or lessees, not the strictly legal effect on title of a recorded instrument which is the gravamen of a cause of action for disparagement of title under California law.” [Seeley v. Seymour, 190 Cal. App. 3d 844, 237 Cal. Rptr. 282, 290 (1st Dist. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987039330&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_290). In reaching this conclusion, the Court reasoned that California follows § 624 of the Restatement of Torts:  One who, without a privilege to do so, publishes matter which is untrue and disparaging to another’s property in land … under such circumstances as would lead a reasonable man to foresee that the conduct of a third person as purchaser or lessee thereof might be determined thereby is liable for pecuniary loss resulting to the other from the impairment of vendability thus caused. [Restatement of Torts § 625 (1938)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0290691712&pubNum=0101589&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I80507b22d6ee11ea8f41e1f6f2aa78) | [Seeley v. Seymour, 190 Cal. App. 3d 844, 237 Cal. Rptr. 282, 291–292 (1st Dist. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987039330&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_291&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_291). |
| [10](#co_fnRef_I80507b23d6ee11ea8f41e1f6f2aa78) | [Certification from the United States Court of Appeals for the Ninth Circuit in Centurion Properties III, LLC v. Chicago Title Insurance Company, 186 Wash. 2d 58, 375 P.3d 651 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039399218&pubNum=0004645&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I8050a230d6ee11ea8f41e1f6f2aa78) | [Certification from the United States Court of Appeals for the Ninth Circuit in Centurion Properties III, LLC v. Chicago Title Insurance Company, 186 Wash. 2d 58, 375 P.3d 651 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039399218&pubNum=0004645&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *citing* [Luce v. State Title Agency, Inc., 190 Ariz. 500, 950 P.2d 159 (Ct. App. Div. 1 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997241357&pubNum=0000661&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that a title company that follows its principal’s instructions to record a document that is not void or faulty on its face will not be liable for doing so to third parties with whom the title company has no contractual or other relationship). In *Luce*, therefore, a title company that recorded a deed of trust upon a general partner’s instruction was not liable to the partnership’s limited partners though the title company had reviewed the partnership agreement and knew the general partner had no authority to execute the deed of trust. *See also* [Kirk Corp. v. First American Title Co., 220 Cal. App. 3d 785, 270 Cal. Rptr. 24 (3d Dist. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990086684&pubNum=0000227&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding a title company was not liable for recording a cancellation of lease where the recordation of such cancellation could be implied from the instructions of the parties to the escrow). |
| [12](#co_fnRef_I8050a231d6ee11ea8f41e1f6f2aa78) | [Certification from the United States Court of Appeals for the Ninth Circuit in Centurion Properties III, LLC v. Chicago Title Insurance Company, 186 Wash. 2d 58, 375 P.3d 651, 663 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039399218&pubNum=0004645&originatingDoc=If4f5ae8c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_663&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_663). |

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2 Title Ins. Law § 20:11 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I805f9650d6ee11ea8f41e1f6f2a)**

§ 20:11. Title companies’ duties as escrow and closing agents—Handling funds

An escrow holder’s fiduciary duties include the duty to properly handle funds in escrow.[1](#co_footnote_I805fbd60d6ee11ea8f41e1f6f2a) Title companies will be liable for improper disbursement of funds they hold in escrow.[2](#co_footnote_I805fbd62d6ee11ea8f41e1f6f2a) The duty to properly handle funds in escrow derives from both the contractual duty to follow escrow instructions[3](#co_footnote_I805fbd63d6ee11ea8f41e1f6f2a) and the escrowee’s fiduciary duty to the parties to an escrow. As the Kansas Supreme Court stated in *Ford v. Guarantee Abstract and Title Co*:

These title companies were fiduciaries and owed the [purchasers] a duty to handle their money with a high degree of care, a duty to absolutely avoid disbursing the [purchasers’] money to pay off a lien on the property until they were assured the [purchasers] were in good title.[4](#co_footnote_I805fe473d6ee11ea8f41e1f6f2a)

Guarantee Abstract & Title Company had been instructed to hold the buyers’ check in escrow and deliver it to the company holding the mortgage on the property in exchange for a mortgage release and warranty deed. Guarantee delivered the check but received nothing in exchange. The release of mortgage was subsequently forthcoming, but the deed was never delivered. The court held that Guarantee had breached both its fiduciary duty to the buyers to comply with good title practice and avoid risk with their funds and its contractual duty to follow the buyers’ instructions.[5](#co_footnote_I805fe474d6ee11ea8f41e1f6f2a)

Similarly, in *Commercial Escrow Co. v. Rockport Rebel*, a Texas appeals court held that an escrow holder was negligent for disbursing seller’s funds in violation of the purchase contract.[6](#co_footnote_I805fe475d6ee11ea8f41e1f6f2a) The seller had advanced $25,000 for the buyers to use to secure a loan commitment. The parties added an addendum to the purchase agreement providing for the seller to receive advance notice of and an opportunity to approve any disbursements of the $25,000 and for its return to the seller if the sale did not close. Instead, the escrow company released the funds to the lender.[7](#co_footnote_I80600b80d6ee11ea8f41e1f6f2a) The court found the escrow company liable for disbursing funds in violation of the addendum to the purchase contract and for negligence.[8](#co_footnote_I80600b81d6ee11ea8f41e1f6f2a)

In addition to being liable for noncompliance with express escrow instructions, an escrow agent will be liable for noncompliance with implied escrow instructions involving handling of funds.[9](#co_footnote_I80611cf0d6ee11ea8f41e1f6f2a) The written escrow instructions in the California case of *Gordon v. D & G Escrow Corp.* did not specifically name to whom the proceeds of the sale were to be disbursed.[10](#co_footnote_I80614400d6ee11ea8f41e1f6f2a) A husband and wife had together opened the escrow and had both signed the instructions.[11](#co_footnote_I80614401d6ee11ea8f41e1f6f2a) However, the wife held title to the property as her separate property and, after the parties filed for divorce, her attorney instructed the escrow agent to pay proceeds only to her. After the sale of the property closed, the escrow agent distributed the proceeds directly to the wife, and the husband sued the escrow agent for breach of contract and negligence.[12](#co_footnote_I80614402d6ee11ea8f41e1f6f2a) The court held that, absent express instructions to the contrary, an escrow agent is expected disburse to the sellers the proceeds of a sale.[13](#co_footnote_I80616b10d6ee11ea8f41e1f6f2a) The court concluded that the language in the instructions combined with the signatures of both husband and wife created an implied instruction to disburse the proceeds to both husband and wife. The court reasoned that an escrow agent may be liable for the breach of an instruction implied in the escrow agreement. Therefore, the escrow agent was liable to the husband for failing to disburse the proceeds in accordance with this implied instruction.[14](#co_footnote_I80616b11d6ee11ea8f41e1f6f2a)

A title company acting as an escrow agent also has a duty to promptly cash checks and deposit funds into the escrow.[15](#co_footnote_I80616b12d6ee11ea8f41e1f6f2a) One of the agent’s first duties after the opening of escrow commonly is to cash the buyer’s earnest money or downpayment check.[16](#co_footnote_I80616b13d6ee11ea8f41e1f6f2a) In *Katleman v. U.S. Communities, Inc.*[17](#co_footnote_I8062a390d6ee11ea8f41e1f6f2a) the purchase contract provided that the buyer would deposit $25,000 earnest money with the title insurance company. The purchase contract also stated that if the sale did not close for any reason other than failure to deliver [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), seller, at his option, could receive the earnest money deposit as liquidated damages. If seller was unable to deliver marketable title, then the title company would return all money deposited to buyer. Buyer delivered a $25,000 draft to the title company who issued a receipt stating that “Pioneer [title insurance company] holds good and sufficient draft in the amount of $25,000.” The title company never presented the draft for payment. The sale failed to close due to buyer’s inability to obtain financing. Seller sued the title company for release of the earnest money deposit, but the draft held by the title company was not honored. The title company alleged at trial that the contract provided for the escrow of a $25,000 draft and not the escrow of $25,000 cash. The court responded:

Pioneer’s assertion that the contract only required it to hold the $25,000 draft and deliver or return it at closing is destroyed by the terms of both the contract and the draft. If the draft was to be held by Pioneer, and either delivered to [seller] or returned to [buyer], the draft should have been made payable to [seller]. Instead, it was made payable to Pioneer.[18](#co_footnote_I8062a391d6ee11ea8f41e1f6f2a)

The court noted that the contract also referred to “amounts paid or deposited with Pioneer” when discussing payment or refund of the earnest money deposit.[19](#co_footnote_I8062a392d6ee11ea8f41e1f6f2a) The Court concluded that the $25,000 was to be in cash or its equivalent. “It was the duty of Pioneer, under the facts here, to cash the draft and hold the money, or promptly advise the principals if the draft was not paid. An undue or unreasonable delay in presenting the draft for payment would be negligence.”[20](#co_footnote_I8062a393d6ee11ea8f41e1f6f2a) The court held that Pioneer breached its fiduciary duty by holding the draft instead of cashing it.[21](#co_footnote_I8062a394d6ee11ea8f41e1f6f2a)

Similarly, in *Lacy v. Ticor Title Insurance Co.*, the buyer tendered a letter of credit to be held as earnest money.[22](#co_footnote_I8062a395d6ee11ea8f41e1f6f2a) After the buyer attempted to cancel the contract, seller instructed Ticor to draw down on the letter of credit. Ticor refused to follow the seller’s instruction and the letter of credit expired by its own terms. The court determined that the “plain meaning of the terms of the letter of credit obligated Ticor, upon instruction from Lacy, to issue a [**sight draft**](http://practicallawconnect.thomsonreuters.com/Document/I25019a92e8db11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and attempt to draw down on the letter of credit, regardless of conflicting instructions from Sullivan.”[23](#co_footnote_I8062caa0d6ee11ea8f41e1f6f2a) The Texas Court of Appeals held that Ticor’s failure to follow said terms and draw on the letter was a breach of its fiduciary duty to seller.[24](#co_footnote_I8062caa1d6ee11ea8f41e1f6f2a)

Furthermore, if a party depositing a check with an escrow agent places conditions on its being cashed that are material and that are not set forth in the escrow instructions, the escrow agent has a duty to disclose that information to other parties to the escrow.[25](#co_footnote_I8062caa2d6ee11ea8f41e1f6f2a)

Of course, construction loan escrows generally condition the escrow agent’s disbursement of construction loan funds on receipt of proof that previously disbursed funds, in fact, were utilized for construction on the land. Construction loan escrows have distinct complexities and practices will vary depending, in part, on the state’s [**mechanic’s lien**](http://practicallawconnect.thomsonreuters.com/Document/Icf4a7270ef0a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) law. Construction loan escrows are not further considered here. The reader is referred to [§ 9:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a9&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on construction loan and mechanic’s lien endorsements.

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| **Footnotes** | |
| [\*](#co_fnRef_I805f9650d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I805fbd60d6ee11ea8f41e1f6f2aa78) | Separately from the common law duty to the parties to the escrow, the agency agreement may create a contractual or fiduciary duty of the agent to the title insurance underwriter to properly handle funds. *See infra* [§ 2:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a5&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and *see generally* [Fidelity National Title Company v. First American Title Insurance Company, 2013 COA 80, 310 P.3d 272 (Colo. App. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030609193&pubNum=0004645&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I805fbd62d6ee11ea8f41e1f6f2aa78) | *See* [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 259 & 267 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_259&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_259) (holding that a title insurer and its agent were liable for the agent’s improper disbursement of funds that caused the purchasers to lose the entire amount paid towards the property). Guarantee was an agent for Chicago Title Insurance Company for the purpose of issuing policies and for “handling all written transactions in the furtherance of issuing a title insurance policy.” The Court found both the insurer and the agent liable for Guarantee’s improper disbursement.  *See also* [Tucson Title Ins. Co. v. D’Ascoli, 94 Ariz. 230, 383 P.2d 119, 122 (1963)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1963124104&pubNum=0000661&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_122&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_122) (finding that the title company improperly disbursed plaintiffs’ funds before the conditions in the escrow instructions had been met); [National Bldg. & Contracting Co., Inc. v. Alerion Bank & Trust Co., 772 So. 2d 938 (La. Ct. App. 4th Cir. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000606412&pubNum=0000735&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, [787 So. 2d 310 (La. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001227169&pubNum=0000735&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and writ denied, [787 So. 2d 317 (La. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001258953&pubNum=0000735&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not yet released for publication) (escrowee breached its fiduciary duty to general contractor by using loan funds designated for construction to pay taxes, closing costs and loan interest); [Gordon v. D & G Escrow Corp., 48 Cal. App. 3d 616, 122 Cal. Rptr. 150, 153 (2d Dist. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_153&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_153); [Dovenmuehle, Inc. v. Lawyers Title Ins. Corp., 478 So. 2d 423 (Fla. Dist. Ct. App. 4th Dist. 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985154264&pubNum=0000735&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [H.B.I. Corp. v. Jimenez, 803 S.W.2d 100, 103 (Mo. Ct. App. E.D. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990178327&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_103&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_103) (holding that a title company breached its fiduciary duty and violated escrow instructions when it improperly disbursed escrowed funds, including paying items not authorized under the construction contract, failing demand written authorization for extras, etc.); [Williams v. Land Title Co. of Dallas, 1997 WL 196345 (Tex. App. Dallas 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997095992&pubNum=0000999&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication) (stating that an escrow holder’s fiduciary duties include the duty to exercise a high degree of care to conserve the money in escrow and to pay it only to those parties entitled to receive it).  *But see* [Claussen v. First America Title Guaranty Co., 186 Cal. App. 3d 429, 230 Cal. Rptr. 749, 754 (6th Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986151083&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_754&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_754) (holding that a title company did not breach its duty when it closed a transaction and disbursed loan proceeds where there was no instruction requiring that closing be delayed until receipt of the borrower’s downpayment for the purchase); [Shaheen v. American Title Ins. Co., 120 Ariz. 505, 586 P.2d 1317, 1319–1320 (Ct. App. Div. 1 1978)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978131511&pubNum=0000661&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1319&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1319) (holding that a title company was not liable for disbursing loan proceeds where disbursement could be implied from the other escrow instructions and where there was no instruction requiring consultation prior to disbursement). The dissent in Shaheen states that Arizona case law does not give the escrow agent implied authority to disburse funds when the escrow instructions do not expressly authorize such disbursement. Rather, an escrow agent faced with unclear instructions is required to seek additional instructions before proceeding beyond the written authority of the original instructions. [586 P.2d at 1321](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1978131511&pubNum=0000661&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1321&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1321). |
| [3](#co_fnRef_I805fbd63d6ee11ea8f41e1f6f2aa78) | *See also infra* §§ [20:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a15&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) considering when title insurance underwriters may be liable for their agent’s mishandling of funds under closing protection letters and [§ 20:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a21&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) regarding when title insurance underwriters may bear liability for agents’ mishandling of funds under common law principles. |
| [4](#co_fnRef_I805fe473d6ee11ea8f41e1f6f2aa78) | [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 268 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_268&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_268). |
| [5](#co_fnRef_I805fe474d6ee11ea8f41e1f6f2aa78) | [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 268 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_268&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_268). |
| [6](#co_fnRef_I805fe475d6ee11ea8f41e1f6f2aa78) | [Commercial Escrow Co. v. Rockport Rebel, Inc., 778 S.W.2d 532, 539 (Tex. App. Corpus Christi 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989126156&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_539&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_539), writ denied, (Jan. 10, 1990). |
| [7](#co_fnRef_I80600b80d6ee11ea8f41e1f6f2aa78) | [Commercial Escrow Co. v. Rockport Rebel, Inc., 778 S.W.2d 532, 534–536 (Tex. App. Corpus Christi 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989126156&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_534&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_534), writ denied, (Jan. 10, 1990). |
| [8](#co_fnRef_I80600b81d6ee11ea8f41e1f6f2aa78) | “In short, Commercial Escrow failed to follow adequate procedures to insure the protection of Rockport Rebel’s funds.” [Commercial Escrow Co. v. Rockport Rebel, Inc., 778 S.W.2d 532, 539 (Tex. App. Corpus Christi 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989126156&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_539&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_539), writ denied, (Jan. 10, 1990). |
| [9](#co_fnRef_I80611cf0d6ee11ea8f41e1f6f2aa78) | [Commercial Escrow Co. v. Rockport Rebel, Inc., 778 S.W.2d 532, 539 (Tex. App. Corpus Christi 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989126156&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_539&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_539), writ denied, (Jan. 10, 1990). |
| [10](#co_fnRef_I80614400d6ee11ea8f41e1f6f2aa78) | [Gordon v. D & G Escrow Corp., 48 Cal. App. 3d 616, 122 Cal. Rptr. 150, 153 (2d Dist. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_153&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_153). The instructions did state that the sellers “would hand [escrow agent] necessary documents called for on [sellers] part to cause title to be shown as above, which [escrow agent is] authorized to deliver when [escrow agent] hold[s] for [sellers] account the money $ within the time as provided … Escrow is hereby authorized and instructed to pay in full all demands or liens of record, including costs and charges if any, without further approval and/or authorization from the undersigned sellers.” [122 Cal. Rptr. at 153, 154](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_153&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_153). |
| [11](#co_fnRef_I80614401d6ee11ea8f41e1f6f2aa78) | [Gordon v. D & G Escrow Corp., 48 Cal. App. 3d 616, 122 Cal. Rptr. 150, 154 (2d Dist. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_154&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_154). |
| [12](#co_fnRef_I80614402d6ee11ea8f41e1f6f2aa78) | [Gordon v. D & G Escrow Corp., 48 Cal. App. 3d 616, 122 Cal. Rptr. 150, 152–153 (2d Dist. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_152&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_152). |
| [13](#co_fnRef_I80616b10d6ee11ea8f41e1f6f2aa78) | [Gordon v. D & G Escrow Corp., 48 Cal. App. 3d 616, 122 Cal. Rptr. 150, 153 (2d Dist. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_153&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_153). *Compare* [Rianda v. San Benito Title Guarantee Co., 35 Cal. 2d 170, 217 P.2d 25 (1950)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1950113397&pubNum=0000661&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (rejecting seller’s claim that title company was negligent in failing to promptly cash or deposit buyer’s earnest money check where seller never gave instructions to cash it or explained that the check was a forfeitable deposit). |
| [14](#co_fnRef_I80616b11d6ee11ea8f41e1f6f2aa78) | [Gordon v. D & G Escrow Corp., 48 Cal. App. 3d 616, 122 Cal. Rptr. 150, 153 (2d Dist. 1975)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1975104304&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_153&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_153). |
| [15](#co_fnRef_I80616b12d6ee11ea8f41e1f6f2aa78) | *See* [Wade v. Lake County Title Co., 6 Cal. App. 3d 824, 86 Cal. Rptr. 182, 189 (1st Dist. 1970)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1970111521&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_189&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_189) (“Although the instructions of the parties contained no direction that the check be deposited, an escrow agent, in the exercise of ordinary diligence would not hold a check for the length of time shown here, without checking to see whether the purchaser had sufficient funds on deposit, and without advising the vendors that the check had not been deposited.”); [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898, 901 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_901&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_901); [Chilton v. Pioneer Nat. Title Ins. Co., 554 S.W.2d 246, 249 (Tex. Civ. App. Waco 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977136617&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_249&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_249), writ refused n.r.e., (Dec. 14, 1977) (holding that a title company escrow agent’s failure to promptly cash checks given to the agent by an escrow party raised a fact issue as to the agent’s negligence). The Chilton court observed that the normal practice of title companies is to cash escrow checks immediately and that only upon instructions by both parties will they not be cashed. [554 S.W.2d at 248](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977136617&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_248&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_248). |
| [16](#co_fnRef_I80616b13d6ee11ea8f41e1f6f2aa78) | *See* [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898, 901 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_901&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_901); [Chilton v. Pioneer Nat. Title Ins. Co., 554 S.W.2d 246 (Tex. Civ. App. Waco 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977136617&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ refused n.r.e., (Dec. 14, 1977) (holding that title company should have cashed buyer’s down payment checks and held the money in escrow, not just held the checks in escrow). |
| [17](#co_fnRef_I8062a390d6ee11ea8f41e1f6f2aa78) | [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898, 901 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_901&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_901). |
| [18](#co_fnRef_I8062a391d6ee11ea8f41e1f6f2aa78) | [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898, 901 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_901&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_901). |
| [19](#co_fnRef_I8062a392d6ee11ea8f41e1f6f2aa78) | [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898, 901 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_901&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_901). |
| [20](#co_fnRef_I8062a393d6ee11ea8f41e1f6f2aa78) | [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898, 901 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_901&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_901). |
| [21](#co_fnRef_I8062a394d6ee11ea8f41e1f6f2aa78) | [Katleman v. U. S. Communities, Inc., 197 Neb. 443, 249 N.W.2d 898, 901 (1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977110015&pubNum=0000595&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_901&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_901). |
| [22](#co_fnRef_I8062a395d6ee11ea8f41e1f6f2aa78) | [Lacy v. Ticor Title Ins. Co., 794 S.W.2d 781 (Tex. App. Dallas 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990136088&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ granted, (Nov. 28, 1990) and writ denied with per curiam opinion, [803 S.W.2d 265 (Tex. 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991031451&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and writ withdrawn, (Jan. 30, 1991). |
| [23](#co_fnRef_I8062caa0d6ee11ea8f41e1f6f2aa78) | [Lacy v. Ticor Title Ins. Co., 794 S.W.2d 781, 787 (Tex. App. Dallas 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990136088&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_787&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_787), writ granted, (Nov. 28, 1990) and writ denied with per curiam opinion, [803 S.W.2d 265 (Tex. 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991031451&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and writ withdrawn, (Jan. 30, 1991). |
| [24](#co_fnRef_I8062caa1d6ee11ea8f41e1f6f2aa78) | [Lacy v. Ticor Title Ins. Co., 794 S.W.2d 781, 789 (Tex. App. Dallas 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990136088&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_789&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_789), writ granted, (Nov. 28, 1990) and writ denied with per curiam opinion, [803 S.W.2d 265 (Tex. 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991031451&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and writ withdrawn, (Jan. 30, 1991). |
| [25](#co_fnRef_I8062caa2d6ee11ea8f41e1f6f2aa78) | *See* [Chilton v. Pioneer Nat. Title Ins. Co., 554 S.W.2d 246, 248 (Tex. Civ. App. Waco 1977)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977136617&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_248&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_248), writ refused n.r.e., (Dec. 14, 1977); [Wade v. Lake County Title Co., 6 Cal. App. 3d 824, 86 Cal. Rptr. 182 (1st Dist. 1970)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1970111521&pubNum=0000227&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  As to the damages a plaintiff must shown, *compare* [Countywide Realty Corp. v. Albani, 420 A.2d 1181 (Del. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980142455&pubNum=0000162&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Capital Title Co. v. Mahone, 619 S.W.2d 204 (Tex. Civ. App. Houston 1st Dist. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981133583&pubNum=0000713&originatingDoc=If4f5ae8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:12 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I807408b0d6ee11ea8f41e1f6f2a)**

§ 20:12. Title companies’ duties as escrow and closing agents—Assumed duties

If a title insurance company assumes duties besides providing escrow services and issuing title insurance policies, the company may be liable for failing to exercise reasonable care in the performance of assumed duties.[1](#co_footnote_I80742fc0d6ee11ea8f41e1f6f2a) Relying on § 552 of the Restatement (Second) of Torts, the Arizona Appellate Court in *Mur-Ray Management Corporation* held that a title company acting as escrow agent had a duty to use reasonable care in communicating information to parties outside of the escrow.[2](#co_footnote_I80742fc1d6ee11ea8f41e1f6f2a) In *Mur-Ray*, Canterbury executed a guaranty for payment of losses the plaintiffs sustained in a business venture with Canterbury. Canterbury secured the guaranty with an assignment to plaintiffs of all proceeds due Canterbury under an escrow at Minnesota Title that had been set up to receive proceeds from the sale of certain property that Canterbury owned. The plaintiffs delivered the guaranty and the assignment to Minnesota Title. An escrow officer at Minnesota Title assured the plaintiffs that nothing further needed to be done to effect payment to them. Shortly thereafter, Canterbury executed an assignment of its interest in the escrow to another business venture in which he was involved. The plaintiffs filed an action seeking clarification as to their rights and damages for any funds disbursed to Canterbury by Minnesota Title.[3](#co_footnote_I807456d0d6ee11ea8f41e1f6f2a)

Minnesota Title argued that it owed no legal duty to the plaintiffs. The Arizona court reasoned that, under § 552 of the Restatement (Second) of Torts,[4](#co_footnote_I807456d1d6ee11ea8f41e1f6f2a) liability for negligent misrepresentation is limited to information supplied in connection with a commercial or business transaction. Furthermore, “[t]he provider of information is bound to exercise care only when he is aware of the intended use of the information and then only if he intended to supply it for that purpose.”[5](#co_footnote_I807456d2d6ee11ea8f41e1f6f2a) Additionally, [§ 552](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0290694407&pubNum=0101577&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) applies only if the provider of information has a pecuniary interest in a transaction in which the information is given.[6](#co_footnote_I807456d3d6ee11ea8f41e1f6f2a) “The fact that the information is given in the course of defendant’s business, profession or employment is a sufficient indication of such a pecuniary interest, even though he receives no consideration specifically for providing the information.”[7](#co_footnote_I807456d4d6ee11ea8f41e1f6f2a) The court concluded that “When Minnesota Title chose to supply information to [plaintiff] for guidance in a business matter, it assumed a duty to use reasonable care that the information was truthful.”[8](#co_footnote_I80747de0d6ee11ea8f41e1f6f2a)

The Oregon Court of Appeals similarly has held that when a title company volunteers advice, it assumes a duty to exercise due care in giving such advice.[9](#co_footnote_I80747de1d6ee11ea8f41e1f6f2a) In *McDonald v. Title Insurance Company*, the plaintiffs hired a title company to handle the closing for their new home. Prior to closing, the plaintiffs discovered that the builder/seller had failed to pay subcontractors involved with the construction. The plaintiffs hesitated to close the sale prior to the builder’s satisfaction of the amounts due the subcontractors. An escrow officer for the title company told the plaintiffs not to worry about the outstanding amounts because they were only a problem for the builder. After the officer’s assurances, the plaintiffs closed the purchase of their home. Within 90 days of completion of construction, [**statutory liens**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) were filed by the unpaid subcontractors against the plaintiffs’ home. The plaintiffs satisfied the liens and sued the title company for negligence.[10](#co_footnote_I8075b660d6ee11ea8f41e1f6f2a)

The court stated that liability in the case could not be premised on the title company’s role as escrow agent because the duty to advise the parties of their legal rights is not included among the fiduciary duties of an escrow agent. Nevertheless, because the defendant voluntarily chose to advise plaintiffs regarding responsibility for the liens, it assumed a duty to exercise due care in the giving of such advice.[11](#co_footnote_I8075b661d6ee11ea8f41e1f6f2a) The court reasoned further that, to sustain a claim for negligence, a claimant must show that the voluntary act complained of placed the claimant in a worse position.[12](#co_footnote_I8075b662d6ee11ea8f41e1f6f2a) The court remanded the negligence claim stating, “A jury might reasonably conclude that the escrow officer should have foreseen that her advice to go ahead with the closing despite the impending claims would lead to the result that occurred in this case.”[13](#co_footnote_I8075b663d6ee11ea8f41e1f6f2a)

In sum, once a title company assumes tasks outside of the escrow instructions, the title company is obligated to perform those tasks in a reasonably prudent manner.[14](#co_footnote_I8075b664d6ee11ea8f41e1f6f2a) [Sections 12:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs12%3a1&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) further examines whether title insurance companies assume a duty to parties to the real estate transaction when they take on the task of searching title and preparing a report of the status of title for title insurance. [Sections 13:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a1&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) consider title insurance companies’ liability when they assume the traditional role of attorneys in providing title, escrow, and closing services.

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| **Footnotes** | |
| [\*](#co_fnRef_I807408b0d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I80742fc0d6ee11ea8f41e1f6f2aa78) | *See* [Mur-Ray Management Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003 (Ct. App. Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991098089&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Arizona Title Ins. & Trust Co. v. O’Malley Lumber Co., 14 Ariz. App. 486, 484 P.2d 639 (Div. 1 1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971123877&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lindstrand v. Transamerica Title Ins. Co., 127 Or. App. 693, 874 P.2d 82 (1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994102597&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [McDonald v. Title Ins. Co. of Oregon, 49 Or. App. 1055, 621 P.2d 654 (1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981100484&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Boenker v. American Title Co., 590 S.W.2d 777 (Tex. Civ. App. Houston 14th Dist. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979138867&pubNum=0000713&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [New West Federal Sav. and Loan Ass’n v. Guardian Title Co. of Utah, 818 P.2d 585, 589–590 (Utah Ct. App. 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991164149&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_589&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_589) (holding escrow agent liable for negligence in obligation it expressly assumed to “secure Trust Deed as a first and paramount lien of record”).  *See also* [Biadi v. Lawyers Title Ins. Corp., 374 So. 2d 30 (Fla. Dist. Ct. App. 3d Dist. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979133670&pubNum=0000735&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). In Biadi, an attorney, Wasman, had created a company to help accomplish fraud on investors. The investments were guaranteed by certificates of deposit owned by another phony corporation created to accomplish Wasman’s scheme. The investors required that the certificates of deposit be put in escrow. Wasman informed the investors that Lawyers Title would act as escrow agent. Wasman created a form letter stating that a “fully negotiable certificate of deposit” had been received and had Lawyers Title send the letters on stationery of Lawyers Title’s legal department. Investors alleged that Lawyers negligently caused them to rely upon its written statement that the certificates of deposit were authentic and fully negotiable. Lawyers’ Title argued that under the escrow agreement its only obligation was to deliver a receipt to the investors acknowledging deposit of the certificates in escrow and that it was not obligated to investigate the validity of the certificates.  The appellate court stated that “there must be consideration as to … ‘additional’ or ‘ superseding’ duties that could be construed to have been voluntarily undertaken” by Lawyers. The critical factor was whether Lawyers’ acts in preparing and dispatching the letters indicated to the investors that Lawyers’ legal department was certifying that the certificates were valid and fully negotiable. The court concluded:  Ultimately, it must be decided whether (a) the investors had cause to rely upon the representations under these circumstances, and (b) whether the escrow agent can be held liable for negligent performance of acts that are outside the precise parameter of the written escrow agreement. Since there was a verbal request by Wasman that [Lawyers] dispatch the transmittal letters, to which [Lawyers] consented, the jury must then determine whether once that consent was given and execution begun, the duty arose to carry out the apparent certification with care and diligence and whether [Lawyers] negligently implied that appropriate methods of verification had been accomplished and resolved.  [Biadi v. Lawyers Title Ins. Corp., 374 So. 2d 30, 35 (Fla. Dist. Ct. App. 3d Dist. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979133670&pubNum=0000735&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_35&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_35). |
| [2](#co_fnRef_I80742fc1d6ee11ea8f41e1f6f2aa78) | [Mur-Ray Management Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003, 1009 (Ct. App. Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991098089&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1009&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1009). *See also* Arizona Title Ins. & Trust Co., note 1, at 645. *Cf.* [Smith v. Commonwealth Land Title Ins. Co., 177 Cal. App. 3d 625, 223 Cal. Rptr. 339, 342 (2d Dist. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986109265&pubNum=0000227&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_342&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_342) (stating “title companies [are] liable only to persons (1) for whose guidance information was supplied; (2) who justifiably relied on the information; and most importantly, (3) who were intended to be influenced by the communication”). |
| [3](#co_fnRef_I807456d0d6ee11ea8f41e1f6f2aa78) | [Mur-Ray Management Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003, 1005 (Ct. App. Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991098089&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1005&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1005). |
| [4](#co_fnRef_I807456d1d6ee11ea8f41e1f6f2aa78) | [Restatement of Torts 2d § 552 (1965)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0290694407&pubNum=0101577&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) provides that:   1. (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in communicating the information. 2. (2) Except as stated in subsection (3), the liability stated in subsection (1) is limited to loss suffered 3. (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and 4. (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends…. |
| [5](#co_fnRef_I807456d2d6ee11ea8f41e1f6f2aa78) | [Mur-Ray Management Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003, 1009 (Ct. App. Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991098089&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1009&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1009). |
| [6](#co_fnRef_I807456d3d6ee11ea8f41e1f6f2aa78) | [Mur-Ray Management Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003, 1009 (Ct. App. Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991098089&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1009&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1009). |
| [7](#co_fnRef_I807456d4d6ee11ea8f41e1f6f2aa78) | [Mur-Ray Management Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003, 1009 (Ct. App. Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991098089&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1009&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1009). |
| [8](#co_fnRef_I80747de0d6ee11ea8f41e1f6f2aa78) | [Mur-Ray Management Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003, 1009 (Ct. App. Div. 1 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991098089&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1009&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1009). *See also* [Boenker v. American Title Co., 590 S.W.2d 777, 780 (Tex. Civ. App. Houston 14th Dist. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979138867&pubNum=0000713&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_780&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_780) (stating that a title company may be liable for fraud when its employees knowingly or negligently make false assurances and a party detrimentally relies on such assurances). |
| [9](#co_fnRef_I80747de1d6ee11ea8f41e1f6f2aa78) | [McDonald v. Title Ins. Co. of Oregon, 49 Or. App. 1055, 621 P.2d 654, 658 (1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981100484&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_658&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_658). *See also* [Bowles v. Key Title Co., 163 Or. App. 9, 986 P.2d 1236, 1239 (1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999216538&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1239&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1239); [Lindstrand v. Transamerica Title Ins. Co., 127 Or. App. 693, 874 P.2d 82, 84 (1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994102597&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_84&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_84) (stating that the title company was liable for negligence where it provided the purchasers with a copy of an incorrect height restriction covering the property). In *Lindstrand*, the plaintiffs entered into a purchase agreement that noted a height restriction on the property of 948 feet above sea level. The restriction given to the plaintiffs at closing set forth a limit of 954 feet above sea level. The plaintiffs built their house based on the 954-foot restriction. [874 P.2d at 83, 84](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994102597&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_83&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_83). |
| [10](#co_fnRef_I8075b660d6ee11ea8f41e1f6f2aa78) | [McDonald v. Title Ins. Co. of Oregon, 49 Or. App. 1055, 621 P.2d 654, 656 (1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981100484&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_656&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_656). |
| [11](#co_fnRef_I8075b661d6ee11ea8f41e1f6f2aa78) | [McDonald v. Title Ins. Co. of Oregon, 49 Or. App. 1055, 621 P.2d 654, 658 (1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981100484&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_658&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_658). |
| [12](#co_fnRef_I8075b662d6ee11ea8f41e1f6f2aa78) | [McDonald v. Title Ins. Co. of Oregon, 49 Or. App. 1055, 621 P.2d 654, 658 (1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981100484&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_658&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_658). |
| [13](#co_fnRef_I8075b663d6ee11ea8f41e1f6f2aa78) | [McDonald v. Title Ins. Co. of Oregon, 49 Or. App. 1055, 621 P.2d 654, 659 (1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981100484&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_659&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_659). |
| [14](#co_fnRef_I8075b664d6ee11ea8f41e1f6f2aa78) | A title company’s preparation of documents outside of an escrow agreement also creates a duty to properly prepare and distribute such documents on behalf of parties to the escrow. *See* [§ 20:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a5&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra*. *See also* [Ivy v. Transamerica Title Ins. Co., 90 Or. App. 511, 752 P.2d 1269, 1272 (1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1988051811&pubNum=0000661&originatingDoc=If4f5d5706fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_1272&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1272) (holding that a title company may be liable for negligence for the preparation of erroneous legal descriptions not called for by the parties’ escrow instructions). |

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2 Title Ins. Law § 20:13 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I8081c450d6ee11ea8f41e1f6f2a)**

§ 20:13. Title companies’ duties as escrow and closing agents—To whom agent’s duties extend

Normally, an escrow holder’s duty is only to the parties to the escrow.[1](#co_footnote_I8081eb60d6ee11ea8f41e1f6f2a) For example, a title insurance company that follows its principal’s instructions to record a document that is not void or faulty on its face will not be liable for doing so to third parties with whom the title company has no contractual or other relationship.[2](#co_footnote_I8081eb61d6ee11ea8f41e1f6f2a) Therefore, a title company that recorded a [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) upon a general partner’s instruction was not liable to limited partners who asserted that the general partner had no authority to execute the deed of trust.[3](#co_footnote_I8081eb63d6ee11ea8f41e1f6f2a)

Nevertheless, in special circumstances, an escrow holder may have assumed a duty to parties outside the escrow agreement.[4](#co_footnote_I8081eb64d6ee11ea8f41e1f6f2a) For example, a Texas Court of Appeals concluded that a title company owed real estate brokers a duty when settling a contract of sale.[5](#co_footnote_I80821270d6ee11ea8f41e1f6f2a) The brokers had arranged a sale of multiple lots and, in lieu of a cash commission, were supposed to receive lot number 80 “free and clear” at the closing. Because the title company failed to procure the release of a lien on lot number 80, the brokers did not receive clear title. The court permitted the brokers to sue the title company for negligently closing the sale of the lots and failing to secure a release of lien.[6](#co_footnote_I80821271d6ee11ea8f41e1f6f2a)

An escrow agent also may owe a duty to an intended third-party beneficiary of an escrow agreement.[7](#co_footnote_I80821272d6ee11ea8f41e1f6f2a) It has been held that a lender who is not a formal party to an escrow transaction on behalf of a vendee and a vendor, but who is identified in the escrow instructions as a beneficiary, is an intended third-party beneficiary who is entitled to the escrow agent’s fiduciary duties.[8](#co_footnote_I80821273d6ee11ea8f41e1f6f2a)

Whether a title insurance company will be deemed to have assumed a duty to a party other than the principals to the escrow will depend on the relationship of the parties and the particular activity and facts involved. Rather than listing here various other special circumstances where it appeared appropriate to a court to find the title insurance company liable to parties other than those named in the escrow agreement, the reader is referred to the cases discussed throughout this chapter.

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| **Footnotes** | |
| [\*](#co_fnRef_I8081c450d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I8081eb60d6ee11ea8f41e1f6f2aa78) | [Carter Development of Massachusetts, LLC v. Howard, 285 So. 3d 367 (Fla. 1st DCA 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049698346&pubNum=0003926&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (purchaser had no claims against escrowee because escrow instructions were given solely by property owner and developer); [Gary E. Patterson & Associates, P.C. v. Holub, 264 S.W.3d 180 (Tex. App. Houston 1st Dist. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014666090&pubNum=0004644&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (judgment creditor had no claim against title company for closing sale of judgment debtor’s house despite recorded judgment); [Markowitz v. Fidelity Nat. Title Co., 142 Cal. App. 4th 508, 48 Cal. Rptr. 3d 217 (2d Dist. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2009267299&pubNum=0007047&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Black v. Metro Title, Inc., 290 Wis. 2d 213, 2006 WI App 52, 712 N.W.2d 395 (Ct. App. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2008418255&pubNum=0000595&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Rove v. First American Title Ins. Co., 1998 WL 696880 (Tex. App. Dallas 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998207187&pubNum=0000999&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not designated for publication) (holding that escrow agent owed duty only to parties to escrow agreement, not to party to tangential contract); [Mark Properties, Inc. v. National Title Co., 116 Nev. 1158, 14 P.3d 507 (2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000647759&pubNum=0004645&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), opinion withdrawn and superseded on other grounds on reh’g, [117 Nev. 941, 34 P.3d 587 (2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001473116&pubNum=0004645&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), opinion reinstated on reh’g, (Nov. 26, 2001) (escrowee is obligated to “disclose facts concerning actual fraud of which the agent is actually aware” but the escrow agent owes such duty only to the parties to the escrow). |
| [2](#co_fnRef_I8081eb61d6ee11ea8f41e1f6f2aa78) | [Certification from the United States Court of Appeals for the Ninth Circuit in Centurion Properties III, LLC v. Chicago Title Insurance Company, 186 Wash. 2d 58, 375 P.3d 651 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039399218&pubNum=0004645&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* in [§ 20:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a10&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) [*supra* Seeley v. Seymour, 190 Cal. App. 3d 844, 237 Cal. Rptr. 282, 290-291 (1st Dist. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987039330&pubNum=0000227&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_227_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_290) (involving recording of facially invalid documents). |
| [3](#co_fnRef_I8081eb63d6ee11ea8f41e1f6f2aa78) | *See* [Luce v. State Title Agency, Inc., 190 Ariz. 500, 950 P.2d 159 (Ct. App. Div. 1 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997241357&pubNum=0000661&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I8081eb64d6ee11ea8f41e1f6f2aa78) | [Freedom Mortg. Corp. v. Burnham Mortg., Inc., 720 F. Supp. 2d 978 (N.D. Ill. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022319524&pubNum=0004637&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* [Butko v. Stewart Title Co. of Washington, Inc., 99 Wash. App. 533, 991 P.2d 697 (Div. 2 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000036833&pubNum=0000661&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), order for publication withdrawn, (May 5, 2000) (holding that an escrow agent owes a duty only to parties to the escrow, except for the limited purpose of informing a third party beneficiary of the escrow of its termination). |
| [5](#co_fnRef_I80821270d6ee11ea8f41e1f6f2aa78) | [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 694 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_694&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_694), writ denied, (Nov. 14, 1990). |
| [6](#co_fnRef_I80821271d6ee11ea8f41e1f6f2aa78) | [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 694 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_713_694&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_694), writ denied, (Nov. 14, 1990). The court also held that, where a title insurance company acts as closing agent, the party for whom it acts may have a cause of action for nondisclosures or misrepresentations under the Deceptive Trade Practices Act, regardless of whether a title insurance policy is issued to that party. |
| [7](#co_fnRef_I80821272d6ee11ea8f41e1f6f2aa78) | [Orlando Millenia, LC v. United Title Services of Utah, Inc., 2015 UT 55, 355 P.3d 965, 972 (Utah 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036719496&pubNum=0004645&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_972&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_972). |
| [8](#co_fnRef_I80821273d6ee11ea8f41e1f6f2aa78) | [Orlando Millenia, LC v. United Title Services of Utah, Inc., 2015 UT 55, 355 P.3d 965, 972 (Utah 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036719496&pubNum=0004645&originatingDoc=If4f5d5736fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4645_972&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_972). |

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2 Title Ins. Law § 20:14 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I808b8850d6ee11ea8f41e1f6f2a)**

§ 20:14. Title companies’ duties as escrow and closing agents—Escrow agent’s action for interpleader

When the title insurance company serving as escrow agent finds itself caught in the middle of a conflict between the parties to the escrow, one remedy may be to file a bill in interpleader. “The very purpose of a suit in interpleader is to prevent the prosecution of other suits against the complainant in interpleader and to require those claiming the fund in the hands of the interpleader to litigate their differences between themselves.”[1](#co_footnote_I808b8851d6ee11ea8f41e1f6f2a) In an interpleader action, the escrow agent pays the disputed funds into the registry of the court. Upon bringing the property in dispute into the court, the escrow agent may be discharged from further liability and the court may order the other parties to interplead and litigate the matter in dispute between themselves.[2](#co_footnote_I808b8852d6ee11ea8f41e1f6f2a) If an interpleader action is proper, the escrow agent may receive attorney’s fees.[3](#co_footnote_I808b8853d6ee11ea8f41e1f6f2a)

In *Drummond Title Co. v. Weinroth*, two real estate brokers had procured a sales contract between the buyers and the seller.[4](#co_footnote_I808baf60d6ee11ea8f41e1f6f2a) Drummond Title Company agreed to act as escrow, insuring, and closing agent. The terms of the sales contract directed the manner in which the title company was to distribute the escrowed funds. Ten days after the contract was executed and the money deposited in escrow, the title company received a letter from the seller and the purchasers advising that they had mutually agreed to call off the sale and directing the title company to return the money to the purchasers less their charge for services as escrow agent. On the same day, the title company received a letter from the brokers advising the title company not to make any refunds unless the brokers were parties to the agreement. The title company was unwilling to risk being sued and so refused to make any refunds unless buyer, seller, and brokers all agreed. The brokers refused to consent and the buyers sued the title company to recover the money they had deposited into escrow. The appellate court held that interpleader was an appropriate action under the facts of the case.

The title company found itself in a situation not of its own creation but out of which there was a possibility of liability in the event it acted without the consent of all of the parties to the original agreement. It had no interest whatever in the funds in its hands and readily disclaimed any. It obviously wanted to be sure that when it released the funds it would not be thereafter harassed with litigation and subjected to liability, and we think it very properly and appropriately invoked the jurisdiction of the equity court for the purpose of settling the rights of all of the parties to the transaction. We think that while the title company is subject to some criticism for waiting until it had been sued by the purchaser before filing its interpleader, it then acted in a manner of fairness to all parties concerned.[5](#co_footnote_I808baf61d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I808b8850d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I808b8851d6ee11ea8f41e1f6f2aa78) | [Drummond Title Co. v. Weinroth, 77 So. 2d 606, 610 (Fla. 1955)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1955114437&pubNum=0000735&originatingDoc=If4f5d5766fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_610&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_610). *See, generally,* [Master Mortg. Inv. Fund, Inc. v. Chicago Title Ins. Co., 34 F.3d 1076 (10th Cir. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994182178&pubNum=0000506&originatingDoc=If4f5d5766fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Title Guaranty Escrow Services, Inc. v. Powley, 2 Haw. App. 265, 630 P.2d 642 (1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981130071&pubNum=0000661&originatingDoc=If4f5d5766fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I808b8852d6ee11ea8f41e1f6f2aa78) | [Drummond Title Co. v. Weinroth, 77 So. 2d 606, 609 (Fla. 1955)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1955114437&pubNum=0000735&originatingDoc=If4f5d5766fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_609&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_609). |
| [3](#co_fnRef_I808b8853d6ee11ea8f41e1f6f2aa78) | [Drummond Title Co. v. Weinroth, 77 So. 2d 606, 609 (Fla. 1955)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1955114437&pubNum=0000735&originatingDoc=If4f5d5766fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_609&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_609). |
| [4](#co_fnRef_I808baf60d6ee11ea8f41e1f6f2aa78) | [Drummond Title Co. v. Weinroth, 77 So. 2d 606, 609 (Fla. 1955)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1955114437&pubNum=0000735&originatingDoc=If4f5d5766fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_609&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_609). |
| [5](#co_fnRef_I808baf61d6ee11ea8f41e1f6f2aa78) | [Drummond Title Co. v. Weinroth, 77 So. 2d 606, 610 (Fla. 1955)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1955114437&pubNum=0000735&originatingDoc=If4f5d5766fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_610&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_610). |

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2 Title Ins. Law § 20:15 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I80a92270d6ee11ea8f41e1f6f2a)**

§ 20:15. Title insurance underwriter’s liability for agents’ escrows and closings—Pursuant to closing protection letter

As discussed in [§§ 2:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a1&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra*, national title insurance underwriters generally issue policies to applicants through local title companies, abstractors, or approved attorneys who are authorized to act as the underwriter’s agents for the issuance of title insurance. In most states today, the local title company or approved attorney also closes the underlying real estate transaction and acts as escrow agent for the parties involved.[1](#co_footnote_I80a92272d6ee11ea8f41e1f6f2a) To verify the agent’s authority to issue the underwriter’s policies and to make the financial resources of the national title insurance underwriter available to indemnify lenders and purchasers for the agent’s errors or dishonesty with escrow or closing funds, title insurance underwriters will, upon request, issue to insurance applicants “insured closing letters,” also referred to as “Closing Protection Letters.”[2](#co_footnote_I80a94982d6ee11ea8f41e1f6f2a) Some underwriters have a separate “approved attorney letter.”[3](#co_footnote_I80a97090d6ee11ea8f41e1f6f2a)

Closing protection letters [CPLs] have made underwriters contractually responsible for their issuing agents and approved attorneys’ closing errors, fraud, or dishonesty.[4](#co_footnote_I80a97091d6ee11ea8f41e1f6f2a) The protection that nonstandard closing protection letters offer can vary depending on the insurer, the state, and the transaction. The exact language of each letter is important. For example, in *Bank of America, NA v. First American Title Ins. Co.*, First American Title Insurance Company’s CPL agreed to reimburse Bank of America for loss arising out of “Fraud or dishonesty of the Issuing Agent handling your funds or documents in connection with such closings.”[5](#co_footnote_I80a97092d6ee11ea8f41e1f6f2a) The Michigan Supreme Court held that Bank of America only had to establish that it suffered losses arising out of the fraud or dishonesty of the title agents in connection with the closing, and no more. The lower courts had accepted First American’s argument that the title agent’s fraud or dishonesty had to be “in handling the lender’s funds or documents.” Although the agents’ fraud and dishonesty was reflected in the HUD-1 settlement statement used for the closing, the lower courts ruled that the HUD-1 documents did not belong to Bank of America and thus there was no fraud or dishonesty “in handling documents that belonged to” Bank of America.[6](#co_footnote_I80abba80d6ee11ea8f41e1f6f2a) The Michigan Supreme Court ruled, however, that the lower courts had relied erroneously on the holding of an earlier case in which the CPL’s language was slightly different.

[I]n the instant case, First American is liable for actual losses arising out of “[f]raud or dishonesty of the Issuing Agent handling your funds or documents in connection with such closings.” Although the distinction is slight—the only difference is the word “in”—the distinction is legally significant. As the Court of Appeals dissent properly recognized, “If the word ‘in’ is included, it defines, and effectively restricts, the types or categories of fraudulent or dishonest activities by a closing agent that can give rise to a right to indemnification, limiting them to conduct associated with handling the mortgage company’s funds or documents.” On the other hand, “[i]f the word ‘in’ is not included, as is the case here, the phrase ‘handling your funds or documents in connection with … closings’ simply defines or identifies the closing agent, effectively broadening the indemnification coverage to any acts of fraud or dishonesty by the closing agent related to a closing.” In light of this distinction, the fraud or dishonesty by Westminster or Patriot need not be tied to their handling of Bank of America’s funds or documents. As a result, Bank of America is able to offer evidence that Westminster and Patriot engaged in fraud or dishonesty in the handling of the HUD-1 settlement statements at closing, regardless of whether those documents belong to Bank of America.[7](#co_footnote_I80abe190d6ee11ea8f41e1f6f2a) (Citations omitted.)

The first standard Closing Protection Letter which the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] adopted broadly accepted responsibility for loss arising out of either failure to follow closing instructions, or fraud or dishonesty of the agent or approved attorney in handling funds or documents in connection with the closing of an insured transaction. The trend of subsequent revisions has been to narrow that responsibility by tightening language that courts construed against the insurers. ALTA’s CPLs have been revised more often than have ALTA’s [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms—most recently in 2008, then December, 2011, then in April, 2014, and again in December, 2015. The many revisions and different versions that still may be active make the legal issues in CPLs difficult to write about. Making general statements is challenging, as is applying precedents that construed earlier CPL versions. Each reader must carefully consider whether issues this treatise notes and statements of fact and law this treatise makes still apply to their particular CPL.

For example, the first promise in ALTA’s 1987 Closing Protection Letters to reimburse for loss arising out of the agent’s failure to comply with the insured’s written closing instructions was limited to closing instructions related to either (a) the status of the title to the insured interest or the validity, enforceability and priority of the lien of the mortgage, (b) the obtaining of other documents in connection with the closing, or (c) collection and payment of funds.[8](#co_footnote_I80abe191d6ee11ea8f41e1f6f2a) By ALTA’s 2015 revision, this clause has been tightened to responsibility for loss “solely” caused by the agent’s failure to comply with written closing instructions “that relate to: (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 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*; ….”[9](#co_footnote_I80abe192d6ee11ea8f41e1f6f2a)

The second broad promise of ALTA’s 1987 CPLs to reimburse for loss that arises out of “fraud or dishonesty” of the agent in handling the addressee’s funds or documents in connection with closings has been significantly narrowed by December, 2015 to limit the underwriter’s responsibility to loss “solely caused by … fraud, theft, dishonesty, or misappropriation … 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*.”[10](#co_footnote_I80abe193d6ee11ea8f41e1f6f2a)

What still is generally true is that, because closing protection letters expressly obligate the underwriter to reimburse the addressee for losses incurred in connection with closings and escrows conducted by its agent or approved attorney, a recipient will not need to rely on the doctrine of apparent authority to recover from the underwriter if its agent diverts escrow funds or is negligent in closing.[11](#co_footnote_I80ac08a1d6ee11ea8f41e1f6f2a) Nevertheless, closing protection and approved attorney letters do not cover all acts of the title insurance agent or approved attorney. They may successfully limit the underwriter’s responsibility to losses caused by those acts of the agent or attorney that the letters expressly describe.[12](#co_footnote_I80ac08a3d6ee11ea8f41e1f6f2a) The meaning and scope of the agent’s actions that are covered often are the subject of litigation.[13](#co_footnote_I80ac08a4d6ee11ea8f41e1f6f2a)

Closing protection letters do not protect the addressee from liability resulting exclusively from the negligence of the addressee or its agents. Nevertheless, it has been held that an indemnification clause that promises indemnification of losses that “arise out of certain specified events” requires indemnification when those events occur, even if the indemnitee may also have been negligent.[14](#co_footnote_I80ac2fb0d6ee11ea8f41e1f6f2a) A 2011 ALTA Closing Protection Letter amendment to indemnify when the addressee’s loss is “solely caused by” the agent’s actions may have been intended to change this result.

Because closing protection letters indemnify as a matter of contract,[15](#co_footnote_I80ac2fb1d6ee11ea8f41e1f6f2a) tort principles and defenses of proximate cause,[16](#co_footnote_I80ac2fb2d6ee11ea8f41e1f6f2a) contributory or comparative negligence, and equitable indemnity should not be relevant.[17](#co_footnote_I80ac2fb3d6ee11ea8f41e1f6f2a) Thus, a title insurer’s defense of “negligent loan underwriting” by the lender has been rejected as irrelevant and not a valid defense in a case on a closing protection letter.[18](#co_footnote_I80ac2fb4d6ee11ea8f41e1f6f2a)

Closing protection letters are to be interpreted in the same manner as a title insurance policy—“that is, liberally construed in favor of the insured and strictly construed against the insurer. Thus, if the language of the CPL ‘is clear, it should be enforced as written.’ On the other hand, if the language is ‘ambiguous, courts generally interpret [it] in accordance with the reasonable expectation of the insured.’”[19](#co_footnote_I80ac56c0d6ee11ea8f41e1f6f2a)

As with title insurance policies, title insurers argued during the post-2008 real estate bust for rescission of closing protection letter contracts on grounds that they were issued pursuant to either misrepresentations regarding the lender’s loan underwriting standards or mutual mistake.[20](#co_footnote_I80ac56c1d6ee11ea8f41e1f6f2a) The Court of Appeals of Michigan found, however, that the lender’s underwriting standards had not been material to issuance of the closing protection letters and there was no evidence of a mutual mistake that affected the substance of the closing protection letter transaction.[21](#co_footnote_I80ac56c2d6ee11ea8f41e1f6f2a)

Sections [20:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a17&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *infra* compare some of ALTA’s Closing Protection Letter revisions, and the 2008 to 2015 versions are reprinted at Appendices [D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [D6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD6&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this book. The most current forms are available from ALTA.[22](#co_footnote_I80ad6830d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I80a92270d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I80a92272d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624, 628 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_628&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_628), affirmed, [2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See generally* [§§ 13:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs13%3a1&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§§ 18:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a1&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) considering which real estate closing activities are permitted to lay title insurance company employees in different states. |
| [2](#co_fnRef_I80a94982d6ee11ea8f41e1f6f2aa78) | *See* [JPMorgan Chase Bank, N.A. v. First American Title Ins. Co., 750 F.3d 573, 88 Fed. R. Serv. 3d 648 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000506&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), as amended, (July 2, 2014), affirming, [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (quoting [Palomar, Title Insurance Law § 20:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=0152721&cite=TITLEINSLs20%3a11&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))); [In re Dameron, 155 F.3d 718, 33 Bankr. Ct. Dec. (CRR) 279, Bankr. L. Rep. (CCH) P 77804 (4th Cir. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998197563&pubNum=0000951&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [TRW Title Ins. Co. v. Security Union Title Ins. Co., 153 F.3d 822, 824 (7th Cir. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998182902&pubNum=0000506&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_824&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_824) (stating that because of the ever-present risk of defalcation and the market power of lenders, “title insurers are often forced to insure the lenders’ escrow deposits if they want the lenders’ business”); [Bergin Financial, Inc. v. First American Title Co., 397 Fed. Appx. 119, 125 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_6538_125&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_6538_125); [First American Title Ins. Co. v. First Alliance Title, Inc., 718 F. Supp. 2d 669, 680 (E.D. Va. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022312736&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_680&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_680), aff’d on other grounds, [2012 WL 3195888 (4th Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028362593&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 489, 892 N.W.2d 467, 473-474 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_473&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_473); [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 100, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*3 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) quoting 2 Palomar, Title Ins. Law; [EnTitle Ins. Co. v. Darwin Select Ins. Co., 2013 WL 422712, \*5 (N.D. Ohio 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029792183&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citing Palomar, Title Insurance Law); [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 417 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_417&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_417), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citing Palomar, Title Insurance Law); [Fifth Third Mortgage-MI, L.L.C. v. Hance, 2011 WL 4501573 (Mich. Ct. App. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026252042&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), appeal denied, [493 Mich. 862, 820 N.W.2d 910 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028744517&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in N.W.2d.* (quoting Palomar, Title Ins. Law); [Resolution Trust Corp. v. American Title Ins. Co., 901 F. Supp. 1122, 1124 (M.D. La. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995210937&pubNum=0000345&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1124&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1124); [Lawyers Title Ins. Corp. v. Edmar Const. Co., Inc., 294 A.2d 865, 869 (D.C. 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972101701&pubNum=0000162&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_162_869&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_869) (holding that an insurer was liable for an attorney’s defalcation of funds where the insurer sent a list of “approved attorneys” to lenders in the area along with an insured closing service letter stating that it would indemnify lenders from losses caused by any of the approved attorneys); [Metmor Financial, Inc. v. Commonwealth Land Title Ins. Co., 645 So. 2d 295, 297 (Ala. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993165211&pubNum=0000735&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_735_297&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_297) (“The purpose of the closing service letter is to provide indemnity against loss due to a closing attorney’s defalcation or failure to follow a lender’s closing instructions.”); [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 80, 761 N.W.2d 832, 843 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_843&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_843) (quoting Palomar, Title Insurance Law), *overruled on other grounds by* [Bank of America, NA v. First American Title Ins. Co., 2016 WL 1453254 (Mich. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Cf. [Fidelity Nat. Title Ins. Co. of Pa. v. Chicago Title Ins. Co., 64 F.3d 656 (4th Cir. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995166407&pubNum=0000506&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See also* Davis, [The Law of Closing Protection Letters, 36 Tort & Ins. L.J. 845, 847 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0283850739&pubNum=0001481&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_1481_847&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1481_847); Murray, Insured Closings: Title Company Agents and Approved Attorneys, 29 Prac. Law. Inst./Real 1161 (2000); Rader, [Closing Protection Letters, 70 Fla. B.J. 38 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0107108636&pubNum=0001140&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=LR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I80a97090d6ee11ea8f41e1f6f2aa78) | *See also* [Meyerson v. Lawyers Title Ins. Corp., 39 A.D.2d 190, 333 N.Y.S.2d 33 (1st Dep’t 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972120560&pubNum=0000602&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), order aff’d, [33 N.Y.2d 704, 349 N.Y.S.2d 675, 304 N.E.2d 371 (1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973280027&pubNum=0000578&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that, even in the absence of an approved attorney letter addressed to the insured, the title insurer’s designation of an attorney as an approved attorney and authorized title insurance agency sufficed to make the title insurer liable for the attorney’s fraud in submitting a false title report). |
| [4](#co_fnRef_I80a97091d6ee11ea8f41e1f6f2aa78) | *See* ALTA, Policy Forms Handbook, 119 (1989); Werner and Borstein, Present Climate for Title Agents, in ABA, Attorneys’ Role in Title Insurance, § E,15 (1990). *See, generally*, [JPMorgan Chase Bank, N.A. v. First American Title Ins. Co., 750 F.3d 573, 88 Fed. R. Serv. 3d 648 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000506&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), as amended, (July 2, 2014); [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 417–418 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_417&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_417), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citing Palomar, Title Insurance Law); [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*6 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the two triggers for liability under the CPL are joined by the conjunction “or” so that the underwriter is liable for the agent’s failure to comply with closing instructions even if no fraud or dishonesty was involved); [In re Lowenstein, 459 B.R. 227, 236 (Bankr. E.D. Pa. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026280608&pubNum=0000164&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_164_236&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_164_236); [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 489, 892 N.W.2d 467, 473-474 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_473&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_473); [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 100, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Escrow Disbursement Ins. Agency, Inc. v. American Title & Ins. Co., Inc., 550 F. Supp. 1192, 1982-83 Trade Cas. (CCH) ¶ 65159 (S.D. Fla. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982149567&pubNum=0000345&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I80a97092d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 100, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I80abba80d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 100, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I80abe190d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 100, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *overruling* [Bank of America, NA v. First American Title Ins. Co., 2014 WL 1271227 (Mich. Ct. App. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2032990490&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 761 N.W.2d 832 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I80abe191d6ee11ea8f41e1f6f2aa78) | *See generally* construing this clause, [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*6 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 100, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fifth Third Mortg. Co. v. Kaufman, 2013 WL 474506 (N.D. Ill. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029819314&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 418 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_418&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_418), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Freedom Mortg. Corp. v. Burnham Mortg., Inc., 720 F. Supp. 2d 978 (N.D. Ill. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022319524&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (closing protection letter issued by title insurer to mortgage lender in connection with real estate transactions was a contract of indemnification and specific liability, not an insurance policy); [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 80, 761 N.W.2d 832, 843 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_843&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_843) (overruled by, [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))); Werner and Borstein, Present Climate for Title Agents, in ABA, Attorneys’ Role in Title Insurance, § E-15, 16 (1990). |
| [9](#co_fnRef_I80abe192d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transactions (12-01-2015) (italics added) in the Appendices to this treatise. *See generally* [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*6 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (construing this clause and finding that written instructions regarding recording mortgages “clearly relate to the validity, enforceability and priority of the lien of the Mortgage.”) |
| [10](#co_fnRef_I80abe193d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transactions (12-01-2015) (italics added) in the Appendices to this treatise. *See also* discussion *infra* [§ 20:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a17&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I80ac08a1d6ee11ea8f41e1f6f2aa78) | *See infra* [§ 20:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a21&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) for discussion of applicability of the common law doctrine of apparent agency. |
| [12](#co_fnRef_I80ac08a3d6ee11ea8f41e1f6f2aa78) | *But see* [Bank of America, NA v. First American Title Ins. Co., Slip Opinion No. 149599 at p. 27, 2016 WL 1453254 (Mich. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *overruling* [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 80, 761 N.W.2d 832, 843 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_843&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_843). |
| [13](#co_fnRef_I80ac08a4d6ee11ea8f41e1f6f2aa78) | *See generally* [Herget Nat. Bank of Pekin v. USLife Title Ins. Co. of New York, 809 F.2d 413, 416 (7th Cir. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987005710&pubNum=0000350&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_416&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_416); [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 489, 892 N.W.2d 467, 473-474 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_473&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_473); [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 100, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fifth Third Mortg. Co. v. Kaufman, 2013 WL 474506 (N.D. Ill. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029819314&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 418 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_418&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_418), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Stout Street Funding LLC v. Johnson, 2012 WL 1994800 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the replacement of “settlement funds” under a Closing Protection Letter did not include damages incurred by payment of attorney’s fees, indirect losses, loss of profits, or other expenses in connection with closing the transaction); [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 418 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_418&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_418), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Freedom Mortg. Corp. v. Burnham Mortg., Inc., 720 F. Supp. 2d 978 (N.D. Ill. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022319524&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (closing protection letter issued by title insurer to mortgage lender in connection with real estate transactions was a contract of indemnification and specific liability, not an insurance policy); Federal Agr. [Mortg. Corp. v. It’s A Jungle Out There, Inc., 2005 WL 3325051 (N.D. Cal. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007841455&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Primary Residential Mortg., Inc. v. Guarantee Title Ins. Co., 2005 WL 2874663 (E.D. Mo. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007616338&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (denying Stewart Title’s argument that HUD-1 Settlement Statement was the *purchaser’s document only*, so that insured lender could have no claim for agent’s falsifying HUD-1 under letter’s promise to cover fraud or dishonesty in handling “your” documents); [Metmor Financial, Inc. v. Commonwealth Land Title Ins. Co., 655 So. 2d 940 (Ala. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994214340&pubNum=0000735&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 80, 761 N.W.2d 832, 843 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_843&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_843), *overruled by* [Bank of America, NA v. First American Title Ins. Co., 2016 WL 1453254 (Mich. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I80ac2fb0d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 288 Ga. App. 642, 648, 655 S.E.2d 269, 274 (2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014214810&pubNum=0000711&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_711_274&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_274). *See, generally*, [TierOne Bank v. U.S. Money Source, Inc., 2007 WL 2904187 (D. Neb. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013462630&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that mortgage originator was in a better position to prevent falsified loans, closing protection letters, and title insurance commitments by the careful selection and verification of the closing agent than the warehouse lender). |
| [15](#co_fnRef_I80ac2fb1d6ee11ea8f41e1f6f2aa78) | *See generally* [Bank of America, NA v. First American Title Ins. Co., 2016 WL 1453254 (Mich. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I80ac2fb2d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 515, 892 N.W.2d 467, 487 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_487&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_487) (a CPL’s promise to indemnify for loss “arising out of” an agent’s actions “does not require proximate cause in the strict legal sense, and … almost any causal connection that is more than incidental or fortuitous is sufficient”). |
| [17](#co_fnRef_I80ac2fb3d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirmed by [2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 502, 892 N.W.2d 467, 480 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_480&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_480); [Bancorp Bank v. Lawyers Title Ins. Corp., 2014 WL 3325861 (E.D. Pa. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033796857&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lehman Bros. Holdings, Inc. v. Hirota, 2007 WL 1471690 (M.D. Fla. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012299274&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that a mortgagee’s recovery under a closing protection letter was under a contract theory, not in tort); Federal Agr. [Mortg. Corp. v. It’s A Jungle Out There, Inc., 2005 WL 3325051 (N.D. Cal. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007841455&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Where ‘the parties have expressly contracted with respect to the duty to indemnify, the extent of the duty must be determined from the contract and not by reliance on the independent doctrine of equitable indemnity.’”); [Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 288 Ga. App. 642, 648, 655 S.E.2d 269, 274 (2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014214810&pubNum=0000711&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_711_274&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_274). |
| [18](#co_fnRef_I80ac2fb4d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [750 F.3d 573, 88 Fed. R. Serv. 3d 648 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000506&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), as amended, (July 2, 2014) and cert. denied, [135 S. Ct. 2349, 192 L. Ed. 2d 143 (2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2035292363&pubNum=0000708&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 498-499, 892 N.W.2d 467, 478-480 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_478&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_478). |
| [19](#co_fnRef_I80ac56c0d6ee11ea8f41e1f6f2aa78) | [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 418 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_418&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_418), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), quoting [New Jersey Lawyers’ Fund for Client Protection v. Stewart Title Guar. Co., 203 N.J. 208, 217, 1 A.3d 632 (2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022664234&pubNum=0007691&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I80ac56c1d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 515, 892 N.W.2d 467, 487 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_487&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_487). |
| [21](#co_fnRef_I80ac56c2d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 515, 892 N.W.2d 467, 487 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d5796fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_487&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_487). |
| [22](#co_fnRef_I80ad6830d6ee11ea8f41e1f6f2aa78) | http://www.alta.org/forms/index.cfm. |

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2 Title Ins. Law § 20:16 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I80bf4280d6ee11ea8f41e1f6f2a)**

§ 20:16. Title insurance underwriter’s liability for agents’ escrows and closings—Pursuant to closing protection letter—State regulation

Some states regulate closing protection letters and limit their issuance or their terms. The principal objection has been that they are more in the nature of fidelity or surety coverage than insurance of land titles.[1](#co_footnote_I80bf6990d6ee11ea8f41e1f6f2a) In several states, including New Hampshire, Vermont, Virginia,[2](#co_footnote_I80bf6992d6ee11ea8f41e1f6f2a) and Wisconsin, the letter cannot protect against the agent’s fraud or dishonesty.[3](#co_footnote_I80bf6993d6ee11ea8f41e1f6f2a) Nebraska restricts closing protection letters to indemnifying against the closing agent’s theft of settlement funds and failure to comply with written closing instructions.[4](#co_footnote_I80bf6994d6ee11ea8f41e1f6f2a) Letters in those states have been more restrictive than the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) standard letter. For the same reason, in New York, closing protection letters were not available because they were considered to violate the single insurance line limitations that state statutes impose on title insurers.[5](#co_footnote_I80bf6995d6ee11ea8f41e1f6f2a) Washington expressly limits title insurance underwriters to issuing such letters only when the title company or attorney also is issuing a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) in the transaction.[6](#co_footnote_I80c053f0d6ee11ea8f41e1f6f2a) Conversely, the legislatures in Florida,[7](#co_footnote_I80c053f1d6ee11ea8f41e1f6f2a) Connecticut,[8](#co_footnote_I80c053f2d6ee11ea8f41e1f6f2a) California[9](#co_footnote_I80c07b00d6ee11ea8f41e1f6f2a) Illinois[10](#co_footnote_I80c07b01d6ee11ea8f41e1f6f2a) and the judiciary in New Jersey[11](#co_footnote_I80c07b02d6ee11ea8f41e1f6f2a) have determined that issuance of closing protection letters does not violate single insurance line limitations and expressly permit title insurers to issue them.

The Kansas Commissioner of Insurance in 1989 had prohibited the issuance of closing protection letters on the basis that they constituted surety or fidelity coverage.[12](#co_footnote_I80c07b03d6ee11ea8f41e1f6f2a) However, in 1996, the Kansas Commissioner reexamined its position in the context of the Kansas Supreme Court’s holding in *Ford v. Guaranty Abstract and Title Company*[13](#co_footnote_I80c07b04d6ee11ea8f41e1f6f2a) that a title company’s failure to use due care in closing a real estate transaction was negligence.[14](#co_footnote_I80c07b05d6ee11ea8f41e1f6f2a) Because the court’s holding suggested that the closing protection letter’s coverage is of negligence, rather than surety or fidelity coverage, the Commissioner announced that title insurers could issue closing protection letters.

The 2008 to 2015 revisions of ALTA’s CPLs may have satisfied the preceding concern of insurance regulators. In them, ALTA has tied each failure for which the title insurer could be liable expressly to actions that fail to establish or adversely affect 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.[15](#co_footnote_I80c07b06d6ee11ea8f41e1f6f2a) Construing one of these CPLs, the U.S. District Court for the Northern District of Georgia has said:

The clear and unambiguous message of the Closing Protection Letters is that Old Republic would only cover those losses that actually affected the *status* of title in some way. Old Republic was only insuring against any danger that would lead the Lender to actually lose title to the property. In other words, Old Republic was doing what it says it does: offering *title* insurance.[16](#co_footnote_I80c07b07d6ee11ea8f41e1f6f2a)

Florida does mandate approval by the Department of Insurance of the form and content of the letters issued in the state.[17](#co_footnote_I80c0a210d6ee11ea8f41e1f6f2a) Texas[18](#co_footnote_I80c0a211d6ee11ea8f41e1f6f2a) and New Mexico[19](#co_footnote_I80c0a212d6ee11ea8f41e1f6f2a) similarly require the use of one approved form. Pennsylvania’s Department of Insurance also has approved one particular “closing service letter,” which is the only form that may be issued in the state after October 1, 2000.[20](#co_footnote_I80c0a213d6ee11ea8f41e1f6f2a) Pennsylvania also prohibits “blanket” letters that would cover a lender for all [**escrow closing**](http://practicallawconnect.thomsonreuters.com/Document/I7d1e2bf0e6f611e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) activities and services from a particular agent over a designated time and, instead, requires issuance of a new letter for each transaction.[21](#co_footnote_I80c0a214d6ee11ea8f41e1f6f2a)

Arizona and Ohio require title insurance agents in a real estate transaction to disclose the availability of closing protection letters to the purchaser, seller, and lender, although in Arizona, this applies only to residential real estate transactions where the title insurance agent also serves as escrow agent.[22](#co_footnote_I80c0a215d6ee11ea8f41e1f6f2a) If an Arizona agent fails to make the required disclosure, the title insurer must reimburse the seller or purchaser for any escrow money lost to the same extent they would have been reimbursed under the insurer’s standard closing protection letter.[23](#co_footnote_I80c0a216d6ee11ea8f41e1f6f2a) The Arizona statute was amended in 2014 to discuss theft, misappropriation, etc. as well as to state that a title insurer may provide a closing protection letter to *any party* to a transaction.[24](#co_footnote_I80c0a217d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I80bf4280d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I80bf6990d6ee11ea8f41e1f6f2aa78) | *See* cases cited *infra* [§ 20:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a19&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) n. 1 & 2. |
| [2](#co_fnRef_I80bf6992d6ee11ea8f41e1f6f2aa78) | Virginia limits such letters’ coverage to closing agents’ failure to follow instructions regarding the disbursement of funds necessary to establish the addressee’s interest in real estate. *See* Administrative Letter 1995-8 from Steven T. Foster, Commissioner of Insurance, to All Companies Licensed to Write Title Insurance in Virginia (dated Sept. 4, 1995). |
| [3](#co_fnRef_I80bf6993d6ee11ea8f41e1f6f2aa78) | *See* N.H. Ins. Bulletin (July 7, 1997); Vermont. Ins. Div. Bulletin 108 (1-10/96); VA State Corporation Commission Bureau of Insurance Administrative Letter 1995-8; Notice from Wisconsin Dept. of Ins. (Jan. 3, 1990). |
| [4](#co_fnRef_I80bf6994d6ee11ea8f41e1f6f2aa78) | [Neb. Rev. Stat. § 44-1984(2)(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000257&cite=NESTS44-1984&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Such closing or settlement protection shall conform to the terms of [title insurance] coverage and form of instrument as required by the director and shall indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer’s named title insurance agent: (i) Theft of settlement funds; and (ii) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage”). |
| [5](#co_fnRef_I80bf6995d6ee11ea8f41e1f6f2aa78) | Circular Letter No. 18, New York Ins. Dept. (1992) (concluding that title insurers may not issue closing protection letters to lenders for losses caused by the improper acts or omissions of the lender’s attorney as such protection is in the nature of fidelity and surety coverage and falls beyond the scope of the title insurer’s license). The department concluded, however, that a “title insurer is not precluded … from issuing an appropriate agent authorization letter, confined to the title insurer’s liability as principal for the acts of its agent within the scope of that agent’s authority on the title insurer’s behalf.” With regards to a letter issued to an attorney who is representing the lender and is also an approved attorney of the insurer, the department stated that whether a closing protection letter is unauthorized isn’t clear. In this context, if the letter diverges from the policy, such letter would be unauthorized. Circular Letter No. 18 (1992) was reaffirmed as current in 2001. *See* N.Y. Ins. Dept., Circular Letter No. 2001-1 1 (Jan. 22, 2001). The New York General Counsel issued an opinion in 2005, however, which concluded that “A title insurance company may issue, in New York, a letter that makes such title insurance company liable for acts of its title agent that are within the scope of that title agent’s authority while acting on the title insurer’s behalf.” N.Y. General Counsel Opinion No. 12-28-2005.  *See also* statutes cited *infra* at [§ 18:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a10&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I80c053f0d6ee11ea8f41e1f6f2aa78) | Letter from Ms. Melodie Bankers, Deputy Commissioner, Office of Insurance Commissioner (May 5, 1989) to Mr. Dennis Sherman, President, Washington Land Title Association. *See also* [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 783 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_783&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_783) (“issuance of a title insurance policy is generally necessary for liability to ensue under a Closing Protection Letter”); [Fleet Mortg. Corp. v. Lynts, 885 F. Supp. 1187, 1190 (E.D. Wis. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995101232&pubNum=0000345&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1190&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1190) (“the letters are generally only issued in connection with a title insurance policy or expected policy”). |
| [7](#co_fnRef_I80c053f1d6ee11ea8f41e1f6f2aa78) | Fla. Admin. Code R. 4186.010 and its original approved form for a closing protection letter were repealed and replaced with a new form adopted by the American Land Title Association and approved for use by the Fla. Office of Insurance Regulation. 2016 FL REG TEXT 424346 (NS); http://www.floir.com/siteDocuments/TitleClosingProtectionLetter.pdf. *See also* [Fla. Stat. § 627.786(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.786&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (authorizing insurers to issue closing protection letters for “loss due to the fraud of, dishonesty of, misappropriation of funds by, or failure to comply written closing instructions by, its contract agents or approved attorneys in connection with a real property transaction for which the title insurer is to issue a title insurance policy”). |
| [8](#co_fnRef_I80c053f2d6ee11ea8f41e1f6f2aa78) | [C.G.S.A. § 38a-404](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000264&cite=CTSTS38A-404&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I80c07b00d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12340.3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12340.3&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I80c07b01d6ee11ea8f41e1f6f2aa78) | The Illinois Legislature passed a law in 2011 specifically allowing closing protection letters. See [215 Ill. Comp. Stat. Ann. 155/16.1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000008&cite=IL215S155%2f16.1&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Prior to passage of this statute, the judiciary had determined that issuance of closing protection letters did not violate the Illinois Title Insurance Act. *Cf.* [Lawyers Title Ins. Corp. v. Dearborn Title Corp., 993 F. Supp. 1159, 1160 (N.D. Ill. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998057268&pubNum=0000345&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1160&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1160). |
| [11](#co_fnRef_I80c07b02d6ee11ea8f41e1f6f2aa78) | *See* [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I80c07b03d6ee11ea8f41e1f6f2aa78) | Kansas Ins. Dept. Bulletin No. 1989-30 (Dec. 1, 1989). |
| [13](#co_fnRef_I80c07b04d6ee11ea8f41e1f6f2aa78) | [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I80c07b05d6ee11ea8f41e1f6f2aa78) | Kansas Ins. Dept. Bulletin No. 1996-6 (June 4, 1996), rescinding Bulletin No. 1989-30. |
| [15](#co_fnRef_I80c07b06d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letters 2008—2015 in the Appendices to this treatise. |
| [16](#co_fnRef_I80c07b07d6ee11ea8f41e1f6f2aa78) | [James B. Nutter & Company v. Old Republic National Title Insurance Company, 2016 WL 5792686, \*3 (N.D. Ga. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039912546&pubNum=0000999&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I80c0a210d6ee11ea8f41e1f6f2aa78) | [Fla. Stat. § 627.786](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.786&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I80c0a211d6ee11ea8f41e1f6f2aa78) | [Tex. Ins. Code §§ 2702.001](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2702.001&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))–[2702.003](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2702.003&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Tex. Ins. Code Ann. § 2502.005 (West)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000178&cite=TXINS2502.005&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (defining “business of title insurance”). |
| [19](#co_fnRef_I80c0a212d6ee11ea8f41e1f6f2aa78) | New Mexico uses the ALTA Closing Protection Letter Form (4-2-14) (but omits Para. 14). See [NMAC § 13.14.18.13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1013444&cite=NMADC13.14.18&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), Form No. 81. |
| [20](#co_fnRef_I80c0a213d6ee11ea8f41e1f6f2aa78) | Title Insurance Rating Bureau of Pennsylvania, MANUAL OF THE TITLE INSURANCE RATING BUREAU OF PENNSYLVANIA 5 (Feb. 1, 2017) (discussing the Closing Protection Letter approved for use by the Dept. of Insurance.); Hart, ed., Title Law Associates Newsletter Vol, 1 No. 4, p. 3 (Fall 2000). |
| [21](#co_fnRef_I80c0a214d6ee11ea8f41e1f6f2aa78) | Title Insurance Rating Bureau of Pennsylvania, MANUAL OF THE TITLE INSURANCE RATING BUREAU OF PENNSYLVANIA 5 (Feb. 1, 2017) (discussing the Closing Protection Letter approved for use by the Dept. of Insurance.); Hart, Title Law Associates Newsletter Vol, 1 No. 4, p. 3 (Fall 2000). |
| [22](#co_fnRef_I80c0a215d6ee11ea8f41e1f6f2aa78) | [Az. Rev. Stat. § 6-841.02(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS6-841.02&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [OH R. C. § 3953.32](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.32&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [23](#co_fnRef_I80c0a216d6ee11ea8f41e1f6f2aa78) | [Az. Rev. Stat. § 6-841.02(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS6-841.02&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [24](#co_fnRef_I80c0a217d6ee11ea8f41e1f6f2aa78) | [Az. Rev. Stat. § 6-841.02(C)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS6-841.02&originatingDoc=If4f5d57c6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:17 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I80d47830d6ee11ea8f41e1f6f2a)**

§ 20:17. Title insurance underwriter’s liability for agents’ escrows and closings—Pursuant to closing protection letter—Standard form letters

The [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 1987 Closing Protection Letter offered indemnification from the underwriter if the agent handled the addressee’s documents or funds dishonestly or fraudulently. The 1987 Closing Protection Letter also offered to protect against loss or damage to the addressee caused by the agent or approved attorney’s failure to follow the addressee’s written closing instructions relating to status of the title to the land or the lien of the mortgage. This included failure to: provide any documents necessary to establish the desired status of title or lien; comply with the addressee’s instructions regarding the satisfaction of requirements or removal of exceptions in the underwriter’s commitment to insure;[1](#co_footnote_I80d47831d6ee11ea8f41e1f6f2a) and follow instructions to obtain certain nontitle documents. It did not cover instructions to ascertain that the nontitle documents were valid or enforceable.[2](#co_footnote_I80d47832d6ee11ea8f41e1f6f2a)

This 1987 standard closing protection letter contained express conditions and exclusions from coverage as well. One exclusion denies liability if the addressee permits the approved attorney to close the transaction before the addressee has received the underwriter’s commitment to insure. A related exclusion negates liability of the underwriter for the approved attorney’s failure to follow instructions of the addressee that conflict with the coverage the underwriter has agreed to provide in its preliminary commitment to insure. These two exclusions attempted to assure that (1) no funds would be disbursed before the insured knew exactly what title insurance coverage the underwriter was offering, and (2) the insured would negotiate with the underwriter, not only the approved attorney, for any coverage different than what the underwriter offered in the preliminary commitment. These exclusions did not apply to local title insurance agents. Underwriters seemed to be concerned that approved attorneys are less controlled by underwriting standards than title company agents and did not want them to unilaterally commit the underwriter to additional coverage by closing the transaction.[3](#co_footnote_I80d49f40d6ee11ea8f41e1f6f2a)

Another exclusion denies liability of the underwriter for loss of closing funds due to a bank’s failure, unless the addressee named a specific bank for deposit of the funds and the agent or attorney used a different bank. The 1987 ALTA letter also specifies that, if the underwriter does not assume the risk of mechanic’s liens in the [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), then it may not be deemed to incur such liability through a closing protection letter.

Additional ALTA closing protection letter forms adopted in 1997 each modified ALTA’s first standard letter discussed above for a specific purpose. The 1997 ALTA closing protection letter—Regulatory was ALTA’s first attempt to adapt the Closing Protection Letter for use in states with regulations prohibiting title insurance companies from issuing any insurance except insurance of real estate titles.[4](#co_footnote_I80d49f41d6ee11ea8f41e1f6f2a) This letter attempted to comply with those state regulations by indemnifying only when the agent or attorney’s failure to follow closing instructions or fraud or dishonesty in handling funds or documents affected the status of the insured title or mortgage lien. (As [§ 20:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a16&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra* describes, ALTA’s 2008 to 2015 revisions now generally tie all failures of an agent for which the underwriter could be liable to those that affect the status of the insured title or mortgage lien.)

The 1997 ALTA Closing Protection Letter—Non-Residential Limitations, modified ALTA’s 1987 standard letter by placing a dollar ceiling on the size of transactions that are covered. The ceiling does not apply if the transaction involves an individual one-to-four family residential property.

The 1997 ALTA closing protection letter—Single Transaction Limited Liability was designed to complement the Non-Residential Limitations letter. If a lender asked for coverage on a transaction above the ceiling in the Non-Residential Limitations letter, the title insurer could review the circumstances of the transaction and issue the Single Transaction Limited Liability letter to assume the risk of the identified transaction.

In 2008, ALTA revised the preceding standard closing protection letters, significantly tightening and limiting the underwriter’s liability.[5](#co_footnote_I80d49f44d6ee11ea8f41e1f6f2a) First, ALTA dropped its 1997 Regulatory Letter and added to all the revised letters its clause limiting the underwriter’s liability unless the agent or approved attorney’s fraud, dishonesty, or negligence in handling funds or documents relates to the status of the insured title or mortgage lien. This clause in 2008 CPLs actually expanded coverage in one important way, however—*i.e.,* the underwriter expressly accepted liability for the agent or approved attorney’s negligence in handling funds or documents. Negligence occurs more frequently and is easier to prove than intentional fraud or dishonesty.

Each 2008 ALTA letter tightens coverage in a second way by naming the specific agent or attorney the underwriter stands behind and denying responsibility for acts of any other party to the real estate transaction, particularly of the addressee’s own employee, attorney, agent, or broker.

Third, the 2008 letters tighten coverage with an exclusion for loss resulting from the borrower’s inability to pay or an erroneous property valuation. Like the earlier letters, the 2008 letters otherwise do not define “loss,” and some of the case law considered *supra* in §§ [5:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a3&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a18&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [6:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a20&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [10:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a8&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [10:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a17&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and *infra* §§ [20:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a19&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) construing what this term encompasses in the context of standard title insurance policies may be useful.

Fourth, the 2008 revisions bar liability under the letters not only for mechanic’s liens, but also for all title “defects, liens, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or other matters” not covered by the addressee’s title insurance policy. The preceding terms are used in standard title insurance policies and their meaning is discussed *supra* [§ 5:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a5&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

Fifth, the revised letters now contain exclusions that have long been standard in title insurance policies for matters created, suffered, assumed, agreed to, or known by the addressee. Sections [6:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a10&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [6:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a17&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra* examine courts’ construction of the preceding terms in title insurance policies.

Sixth, the 2008 letters also borrow a condition from standard title insurance policies denying liability for claims that the addressee settles without the underwriter’s consent. [Section 8:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a8&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra* examines the similar title insurance policy condition barring liability for claims an insured settles without the underwriter’s consent and the litigation that results when a title insurer refuses consent to a settlement while the insured’s losses mount during litigation.

Seventh, all the 2008 letters include an arbitration clause comparable to that in ALTA’s 2006 Owner’s and Loan Policies. [Section 8:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a17&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))’s examination of title insurance policies’ arbitration condition may be helpful.

Probably the most significant of the reductions on underwriters’ liability in the 2008 ALTA Closing Protection Letters is their bar for any loss if “written notice is not received within one year from the date of the closing.” Some underwriters’ individual closing protection letter forms have long contained a one year limitation from the date of the closing. Closing protection letters approved for use in Florida contained an even shorter limit—ninety days.[6](#co_footnote_I80d5b0b1d6ee11ea8f41e1f6f2a) Yet, will a warehouse lender or assignee in the secondary mortgage market always learn within such a short time that a default on one of its mortgages was the consequence of a fraud in which the title insurance agent or approved attorney participated? The common law rule is that late notice does not bar an insured’s claim unless the insurer is prejudiced thereby.[7](#co_footnote_I80d5d7c0d6ee11ea8f41e1f6f2a) Some closing protection letter forms state this expressly,[8](#co_footnote_I80d5d7c1d6ee11ea8f41e1f6f2a) but even if the letter does not, this common law rule likely will apply to the 2008 CPLs just as it has to earlier CPLs[9](#co_footnote_I80d5d7c2d6ee11ea8f41e1f6f2a) and to notices of claims under title insurance policies.[10](#co_footnote_I80d5d7c3d6ee11ea8f41e1f6f2a) It is the insurer’s “burden to demonstrate prejudice arising from the lack of prompt notice.”[11](#co_footnote_I80d5d7c5d6ee11ea8f41e1f6f2a)

The ALTA 2008 Closing Protection Letter—Limitations also contains a ceiling like the 1998 Closing Protection Letter—Non-Residential Limitations.

In 2011, ALTA amended its Closing Protection Letter—Single Transaction and adopted a new Closing Protection Letter—Multiple Transactions. ALTA incorporated into these forms the changes made in 2008, added exclusions and conditions, and then reduced the forms offered to these two. In 2014, ALTA amended the CPLs again, clarifying language and adding definitions as well as more conditions and exclusions to resolve issues that had resulted in court decisions unfavorable to the insurers. *See* cases cited *infra* §§ [20:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a17&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

The 2014 amendment with the broadest effect likely is the deletion of “negligence” from the acts of the agent or approved attorney that are covered. Instead of covering “fraud, dishonesty or negligence … in handling your funds or documents in connection with the closing” as did the 2008 CPLs, the 2014 CPLs cover “fraud, theft, dishonesty, or misappropriation of the Issuing Agent or Approved Attorney in handling Your Funds or documents.”[12](#co_footnote_I80d5fed2d6ee11ea8f41e1f6f2a) Thus, when an agent or attorney’s negligence causes loss, are recipients of 2014 CPLs limited to claims on the policy or forced back to litigating the common law theories of principal and agent discussed *infra* [§ 20:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a21&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in order to recover from the title insurance underwriter?

The 2014 CPLs also expressly exclude losses arising out of laws related to truth-in-lending, predatory lending, [**securitization**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of mortgages, or the borrower’s ability to repay the loan.[13](#co_footnote_I80d625e1d6ee11ea8f41e1f6f2a) And, they exclude transactions in which the agent or approved attorney is acting as a facilitator for a § 1031 exchange or for disbursement of construction loan proceeds.

In response to case law, the 2014 CPLs also were amended to say a lender must hold the indebtedness both at the time the underwriter is notified of a claim and at the time payment is made.[14](#co_footnote_I80d625e4d6ee11ea8f41e1f6f2a) This change could have prohibited a lender from selling a loan during the entire time it takes for the underwriter to pay the claim. ALTA revised this clause in December 2015 to say, instead, that the title insurer will be liable only to the holder of the indebtedness at the time payment is made.[15](#co_footnote_I80d64cf1d6ee11ea8f41e1f6f2a) This revision also resolves a question asked in [§ 20:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a18&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) below regarding which lender or assignee may be paid following a chain of assignments of the insured mortgage.

Further responding to case law, the 2014 CPLs were amended to say that the short one-year claims period beginning on the date of the transmittal of closing funds to the agent cannot be extended by “lack of prejudice” to the underwriter, but the time can be *shortened* to the extent the underwriter is prejudiced.[16](#co_footnote_I80d64cf3d6ee11ea8f41e1f6f2a) For the same reason, the 2014 CPLs now expressly deny liability if a written notice of a claim is not received within one year from the transmittal of closing funds even if the underwriter is not prejudiced by later notice.[17](#co_footnote_I80d64cf6d6ee11ea8f41e1f6f2a)

In reaction to the numerous [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) action lawsuits filed on the basis of CPLs in recent years, the 2014 CPLs attempt to prohibit the right to litigate claims under the letter on a class action basis.[18](#co_footnote_I80d67402d6ee11ea8f41e1f6f2a) It will be interesting to see if courts will uphold this contractual constraint.

The 2014 CPLs retain and clarify the 2011 condition that defined the title insurer’s liability for loss and helped to answer many of the issues this treatise discusses in [§ 20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The 2014 CPLs also retain the 2011 statement that the policy “Issuing Agent” is the underwriter’s agent “only for the limited purpose of issuing Policies” and not for “providing closing or settlement services.” This likely will be used in refuting common law arguments about an agent’s apparent authority, which are discussed *infra* §§ [2:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a5&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [20:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a21&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

In December 2015, ALTA’s CPLs were revised to conform to the Truth in Lending Act-Real Estate Settlement Procedures Act Integrated Disclosure Rule. Other 2015 changes include tying the CPL’s coverage more to the policy’s coverage and exclusions. For example, it provides that the CPL’s coverage relating to defects, liens, encumbrance or other matters in connection with the transaction is limited to those the policy does not exclude or except. Similarly, it excludes loss from the agent’s failure to comply with closing instructions relating to laws the effect of which the policy excludes from coverage.[19](#co_footnote_I80d69b12d6ee11ea8f41e1f6f2a)

The 2015 ALTA CPL also both (a) limits coverage of the agent’s failure to obtain a document the addressee requires for closing unless said failure affects the status of title or the validity, enforceability or priority of the insured mortgage, and (b) adds a new Exclusion 3(h) for the agent’s failure “to determine the validity, enforceability or the effectiveness of a document required by Your closing instructions.”[20](#co_footnote_I80d69b13d6ee11ea8f41e1f6f2a) Thus, the policy, not the closing protection letter, will be the only remedy if the closing agent’s failure to obtain a document or determine the validity, enforceability, or effectiveness of a document affects the insured title or mortgage.[21](#co_footnote_I80d69b14d6ee11ea8f41e1f6f2a) Title insurers’ goal here seems to be to defeat the result in cases such as *Regions Bank v. Commonwealth Land Title Insurance Company* which recognized the distinction prior CPLs had made between liability for failure to determine the validity of “documents that are necessary to establish the validity, enforceability and priority of the lien, such as the Mortgage, and … other documents specifically required by” the addressee.[22](#co_footnote_I80d69b15d6ee11ea8f41e1f6f2a)

Specifically, the CPL provides that [the insurer] is liable to [the lender] for losses arising out [of the agent’s] failure to comply with [the lender’s] written closing instructions relating to:

(a) … the validity, enforceability and priority of [ ] [the] [M]ortgage …, including the obtaining of documents … necessary to establish such status of [the] 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….

Commonwealth relies on the exclusion in the second clause above to argue its agent was not required to review documents prepared by Regions to determine if they are proper and enforceable. However, the exclusion does not apply to documents like the Mortgage that are necessary to establish the validity, enforceability and priority of the lien. Rather, the exclusion applies only to other documents specifically required by Regions.” (citations omitted)[23](#co_footnote_I80d6c220d6ee11ea8f41e1f6f2a)

The 2015 CPLs also add cooperation requirements similar to those in ALTA title insurance policies.[24](#co_footnote_I80d6c221d6ee11ea8f41e1f6f2a) This will avoid litigation such as that discussed *infra* [§ 20:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a19&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to determine whether the cooperation condition of the policy applies to the previously issued closing protection letter.

In 2018, a further revision to both ALTA’s single and multiple transactions Closing Protection Letters expressly excludes coverage of fraud, theft, dishonesty or misappropriation by anyone other than the title insurer, issuing agent, or approved attorney. This was not surprising, but another not only excludes fraud via wire, mail, telephone, facsimile machine, unauthorized computer, network, email or document use, plus identity theft and diversion of funds, but is broadened, at the insurer’s option, to exclude coverage even if these acts ARE perpetrated by the insurer’s employee, and issuing agent or approved attorney.[25](#co_footnote_I80d6c224d6ee11ea8f41e1f6f2a)

Title insurers’ goal for all the preceding narrowings of their closing protection letters over the years seems to have been accomplished, according to the U.S. District Court for the Northern District of Georgia:

The clear and unambiguous message of the Closing Protection Letters is that Old Republic would only cover those losses that actually affected the *status* of title in some way. Old Republic was only insuring against any danger that would lead the Lender to actually lose title to the property. In other words, Old Republic was doing what it says it does: offering *title* insurance.[26](#co_footnote_I80d6e932d6ee11ea8f41e1f6f2a)

The original intent behind closing protection letters *was* to satisfy customers that individual independent title agents and attorney agents were safe to use because the underwriter’s deeper pockets would be available if the agent erred or absconded with the funds for closing. Reducing CPLs’ protection to acts of the agent that actually affect the status of title was deemed necessary both in order to limit title insurers’ risk and keep the product within the realm of their expertise. Counsel for insureds are left asking, however, whether today’s CPLs give enough protection for them to trust an independent title insurance agent or attorney agent with their clients’ funds. This author has heard experienced counsel in the American College of Real Estate Lawyers and American College of Mortgage Attorneys say that, in the future, they either will use the title insurance underwriter’s own local office for their clients’ closings so the underwriter will have direct liability, or, at a minimum, they may allow an independent title insurance agent or approved attorney to handle closing documents, but will wire all funds through the title insurance underwriter.

The most current ALTA Closing Protection Letter forms may be found at http://www.alta.org/forms/index.cfm.

See this treatise’s discussion in [§ 4:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a3&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of whether Closing Protection Letters protect insureds against the risk of loss from instruments or events between the date of the preliminary title examination and the closing of the real estate transaction.[27](#co_footnote_I80d9a850d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I80d47830d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I80d47831d6ee11ea8f41e1f6f2aa78) | ALTA, Policy Forms Handbook, 119, 120 (1989). |
| [2](#co_fnRef_I80d47832d6ee11ea8f41e1f6f2aa78) | ALTA, Policy Forms Handbook, 119, 120 (1989). *See* [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*9-10 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (pointing out that the CPL distinguishes between documents that are necessary to establish the validity, enforceability and priority of the lien, and “other documents” and that it is only the “other documents” for which the agent has no obligation to determine validity, enforceability or effectiveness). |
| [3](#co_fnRef_I80d49f40d6ee11ea8f41e1f6f2aa78) | ALTA, Policy Forms Handbook, 119, 120 (1989). |
| [4](#co_fnRef_I80d49f41d6ee11ea8f41e1f6f2aa78) | Such regulations are discussed *supra* at [§ 18:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a10&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I80d49f44d6ee11ea8f41e1f6f2aa78) | *See infra* Appendix [D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [D2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD2&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I80d5b0b1d6ee11ea8f41e1f6f2aa78) | *See, generally,* [Federal Agr. Mortg. Corp. v. It’s A Jungle Out There, Inc., 2005 WL 3325051 (N.D. Cal. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007841455&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [RTC Mortg. Trust 1994 N-1 v. Fidelity Nat. Title Ins. Co., 58 F. Supp. 2d 503, 538–540 (D.N.J. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_538&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_538).  Florida closing protection letters issued by Stewart Title Guaranty Company in 2008 said:  When the failure to give prompt notice shall prejudice the Stewart Title Guaranty Company, then liability of the Stewart Title Guaranty Company hereunder shall be reduced to the extent of such prejudice. The Stewart Title Guaranty Company shall not be liable hereunder unless notice of loss in writing is received by the Stewart Title Guaranty Company within ninety (90) days from the date of discovery of such loss.  [F.D.I.C. v. Stewart Title Guar. Co., 2013 WL 1891307, \*2 (S.D. Fla. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030488431&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The court held that the FDIC had submitted notices of claims within 90 days of the date it learned the agent was involved in fraud which was the date it discovered its loss under the CPL, even though this was three years from the date the borrowers defaulted. *In accord* [F.D.I.C. v. First American Title Ins. Co., 611 Fed. Appx. 522 (11th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036163962&pubNum=0006538&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. denied, [136 S. Ct. 1165, 194 L. Ed. 2d 177 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037566635&pubNum=0000708&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Also interpreting the 90-day notice requirement in the Florida Closing Protection Letter, *see* [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 137 F. Supp. 3d 1331 (S.D. Fla. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037353582&pubNum=0007903&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Federal Deposit Insurance Corp., as Receiver for IndyMac Bank, FSB v. Attorneys’ Title Insurance Fund, Inc., Case No. 10-21197-CIV-Huck/Bandstra (S.D.Fla. May 17, 2011) (slip op.) (“IndyMac”), and [U.S. Bank Nat. Ass’n v. First American Title Ins. Co., 2012 WL 1080876 (M.D. Fla. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027422500&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), appeal dismissed, 11th Cir. 12-14727(Dec. 7, 2012). |
| [7](#co_fnRef_I80d5d7c0d6ee11ea8f41e1f6f2aa78) | *See* [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624, 633 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_633&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_633), aff’d, [750 F.3d 573, 88 Fed. R. Serv. 3d 648 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000506&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), as amended, (July 2, 2014) and cert. denied, [135 S. Ct. 2349, 192 L. Ed. 2d 143 (2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2035292363&pubNum=0000708&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“failure to give timely notice” did not bar claim under closing protection letter where title insurer knew of its agent’s fraud independently and from insured’s title insurance policy claim), affirmed by [2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 504, 892 N.W.2d 467, 481 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_481&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_481); [Fifth Third Mortg. Co. v. Lamey, 2013 WL 1976042 (D. Minn. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030534910&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [F.D.I.C. v. Stewart Title Guar. Co., 2013 WL 1891307 (S.D. Fla. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030488431&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I80d5d7c1d6ee11ea8f41e1f6f2aa78) | *See e.g.,* [F.D.I.C. v. Stewart Title Guar. Co., 2013 WL 1891307 (S.D. Fla. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030488431&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624, 633 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_633&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_633), affirmed by [2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I80d5d7c2d6ee11ea8f41e1f6f2aa78) | *See* [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 504, 892 N.W.2d 467, 481 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_481&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_481) where the conditions of the CPLs provided that “Claims shall be made promptly … When the failure to give prompt notice shall prejudice [the insurer,] then liability of [the insurer] shall be reduced to the extent of such prejudice.” The court held that the title insurer failed to show it was prejudiced by the lender’s delays. |
| [10](#co_fnRef_I80d5d7c3d6ee11ea8f41e1f6f2aa78) | *See* [Fifth Third Mortg. Co. v. Lamey, 2013 WL 1976042 (D. Minn. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2030534910&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also supra* [§ 8:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a5&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. *But see* discussion later in this Section of the 2014 CPL amendment which asserts that the time limits for notice and filing claims will not be excused or extended even if the title insurer was not prejudiced. |
| [11](#co_fnRef_I80d5d7c5d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 519, 892 N.W.2d 467, 489 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_595_489&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_489). |
| [12](#co_fnRef_I80d5fed2d6ee11ea8f41e1f6f2aa78) | *See infra* [Appendix D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Appendix D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I80d625e1d6ee11ea8f41e1f6f2aa78) | *See infra* [Appendix D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Appendix D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I80d625e4d6ee11ea8f41e1f6f2aa78) | *See infra* [Appendix D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Appendix D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I80d64cf1d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transaction (Adopted 12-01-2015; Revised 12-01-2018) at Appendix D5 *infra*. |
| [16](#co_fnRef_I80d64cf3d6ee11ea8f41e1f6f2aa78) | *See infra* [Appendix D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Appendix D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I80d64cf6d6ee11ea8f41e1f6f2aa78) | *See* cases applying both the common law rule and the policy provision that late notice is excused when the insurer is not prejudiced thereby *infra* §§ [8:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a5&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [8:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a6&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I80d67402d6ee11ea8f41e1f6f2aa78) | *See infra* [Appendix D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Appendix D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I80d69b12d6ee11ea8f41e1f6f2aa78) | https://www.alta.org/news/news.cfm?20151112-ALTA-Board-Approves-Revised-CPLs-Decertifies-ALTA-Endorsement-2-06. |
| [20](#co_fnRef_I80d69b13d6ee11ea8f41e1f6f2aa78) | ALTA Closing Protection Letter—Single Transaction (Adopted 12-01-2015; Revised 12-01-2018) at Appendix D5 *infra*. |
| [21](#co_fnRef_I80d69b14d6ee11ea8f41e1f6f2aa78) | *See ALTA Board Approves Revised CPLs, Decertifies ALTA Endorsement 2-06*, https://www.alta.org/news/news.cfm?20151112-ALTA-Board-Approves-Revised-CPLs-Decertifies-ALTA-Endorsement-2-06: “[C]hanges include … recognition that there is no obligation to determine the validity, enforceability, or effectiveness of a document, except to the extent the policy coverage applies.” |
| [22](#co_fnRef_I80d69b15d6ee11ea8f41e1f6f2aa78) | [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*9-10 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [23](#co_fnRef_I80d6c220d6ee11ea8f41e1f6f2aa78) | [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*9-10 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [24](#co_fnRef_I80d6c221d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transaction (Adopted 12-01-2015; Revised 12-01-2018) at Appendix D5 *infra*. *See also supra* [§ 8:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a7&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) considering the policy condition creating the insured’s duty to cooperate with the title insurer. |
| [25](#co_fnRef_I80d6c224d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transaction (Adopted 12-01-2015; Revised 12-01-2018) at [Appendix D5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD5&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and ALTA Closing Protection Letter—Multiple Transactions (Adopted 12-01-2015; Revised 12-01-2018) at [Appendix D6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD6&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *infra*. |
| [26](#co_fnRef_I80d6e932d6ee11ea8f41e1f6f2aa78) | [James B. Nutter & Company v. Old Republic National Title Insurance Company, 2016 WL 5792686, \*3 (N.D. Ga. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039912546&pubNum=0000999&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [27](#co_fnRef_I80d9a850d6ee11ea8f41e1f6f2aa78) | *See, generally*, [Escrow Disbursement Ins. Agency, Inc. v. American Title & Ins. Co., Inc., 550 F. Supp. 1192, 1982-83 Trade Cas. (CCH) ¶ 65159 (S.D. Fla. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982149567&pubNum=0000345&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The court commented that title insurance companies’ closing protection letters generally did not appear to provide such “gap coverage.” Whether such a letter might protect a particular recipient would be a question of fact in each case. [550 F. Supp. at 1197](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982149567&pubNum=0000345&originatingDoc=If4f5d57f6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1197&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1197). |

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2 Title Ins. Law § 20:18 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I80ea2310d6ee11ea8f41e1f6f2a)**

§ 20:18. Title insurance underwriter’s liability for agents’ escrows and closings—Pursuant to closing protection letter—Who is protected

A closing protection letter applies to the specific transaction in which it is issued. Closing protection letters are most often sought by national commercial customers such as major lending institutions.[1](#co_footnote_I80ea2311d6ee11ea8f41e1f6f2a) A frequently litigated issue has been whether parties other than the addressee of the letter may recover when the title insurer’s agent or approved attorney in the transaction steals closing funds or fails to follow closing instructions.

First, real estate purchasers/mortgagors have recovered when their mortgagees received closing protection letters. The New Jersey Supreme Court held in *Sears Mortgage Corp. v. Rose* that a title insurer was required to reimburse a purchaser/mortgagor for closing funds stolen by the insurer’s attorney-agent, though the insurer had given only the mortgagee a closing protection letter.[2](#co_footnote_I80ea4a20d6ee11ea8f41e1f6f2a) The court did not find that the mortgagor was protected by the letter issued to the mortgagee but did hold that the title insurer had a duty to advise the mortgagor that protection was available to cover the risk of misuse of closing funds, just as it advised the mortgagee. The court also held that the duty of good faith and fair dealing implicit in the title insurance contract obligated the insurer to protect its insureds against theft of their funds by its title insurance agents, including attorney-agents. In a companion case, *Clients’ Security Fund of the Bar of New Jersey v. Security Title & Guaranty Co.*, the court reached the same conclusions in favor of a refinancing owner.[3](#co_footnote_I80ea4a21d6ee11ea8f41e1f6f2a) As discussed infra § 20:16, some states have resolved this issue statutorily by requiring title insurers to offer closing protection letters to real estate purchasers as well as lenders. Today, most closing protection letters, including ALTA’s standard 1987, 1998, 2008, 2011 and 2014 Closing Protection Letters, expressly extend protection to homeowners in letters addressed to their lenders:

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.[4](#co_footnote_I80ea4a22d6ee11ea8f41e1f6f2a)

A second set of cases has asked whether the assignee of an insured mortgage is protected by the closing protection letter addressed to the original mortgagee. Today, mortgage lenders generally assign their loans and mortgages immediately after closing into the secondary mortgage market. Often, the original mortgage lender assigns the loan and mortgage to a “conduit” lender who packages them with others and then sells pools of mortgages into the [**secondary market**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3a51ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).[5](#co_footnote_I80ea7133d6ee11ea8f41e1f6f2a) If the escrow agent’s failure to follow closing instructions or to properly disburse funds causes a defect in the mortgage lien, the assignee in the secondary market will require the conduit lender to repurchase the mortgage. Unless the conduit lender can require the originating lender to repurchase from it, the conduit lender will sustain the loss. Can the conduit lender claim protection under a closing protection letter issued to the originating lender? [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) resolved the preceding issue in its 2008 revision of its standard closing protection letters by expressly covering not only the addressee but also the lender’s assignees and warehouse lender.[6](#co_footnote_I80ea7134d6ee11ea8f41e1f6f2a)

As to individual underwriters’ letters without express coverage of assignees, title insurers likely will assert that the letter protects only the named lender. In most cases in which title insurers have asserted this defense, courts have assumed, without deciding, that an assignee, purchaser, or funder of the mortgage can sue under the closing protection letter issued with the loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), and have resolved the assignee’s claim on other grounds.[7](#co_footnote_I80ea9840d6ee11ea8f41e1f6f2a) One court has agreed with title insurers, however, that it is only the lender to whom the letter is addressed who is protected, not its successor, “in the absence of language in the protection letter extending the letter’s coverage down the chain of subsequent holders or to an assignment of” the addressee’s contract rights.[8](#co_footnote_I80ea9841d6ee11ea8f41e1f6f2a)

Nevertheless, two rationales support coverage for the assignee/conduit lender. First, is not the closing protection letter an assignable contract, just like the loan and mortgage instruments? If the other contracts in the loan file may be assigned to the conduit lender, why not the closing protection letter? Secondly, the lender’s title insurance policy includes assignees of the loan and insured mortgage in its definition of the “insured” under the policy. In states where the closing protection letter is considered to be insurance and in states where the letter’s issuance is considered to be incidental to the issuance of title insurance policies, would not the letter go with the policy to cover assignees of the loan and mortgage?

Often, the conduit lender is a subsidiary of the original lender. Under these facts, a court also might find that the subsidiary conduit lender was the parent lender’s agent for purposes of receiving executed notes and mortgages from the closing agent and assigning them into the secondary mortgage market. The conduit lender, then, may be permitted to assert the parent lender’s claim under the closing protection letter. Otherwise, a court might find that a letter issued to a parent company benefits any subsidiary that delivers money or documents directly to the closing agent or relies on the closing agent for receipt of correct documents.

If a closing protection letter is found to not cover an assignee of the loan, the insurer’s avoidance of the claim likely would be short-lived. The conduit lender who was required by the ultimate assignee to repurchase the note and mortgage surely would have grounds to require the original lender to repurchase from it. The originating lender then would sustain the loss for which it could assert the claim on the closing protection letter.

While an assignee of mortgage-backed loans may succeed based on the preceding rationales, the better practice with closing protection letters that do not expressly cover the lender’s assignees would be to address the closing protection letter to both the originating lender and the intended assignee. For this reason, it is common to see both title insurance policies and closing protection letters issued to “ABC Mortgagee and XYZ, Assignee” or “ABC Mortgage and its successors and assigns, as their interests may appear.”

The Federal Deposit Insurance Corporation [FDIC] as receiver for a failed lender has been held eligible to recover under the lender’s closing protection letter, even after selling the lender’s loan and title policy.[9](#co_footnote_I80ea9842d6ee11ea8f41e1f6f2a) In *JP Morgan Chase Bank, N.A. v. First American Title Insurance Corp.*, First American had argued that the closing protection letter only protects a lender while that lender holds a mortgage insured by a First American policy.[10](#co_footnote_I80ea9843d6ee11ea8f41e1f6f2a) The court explained that the FDIC subsequently stepped into WaMu’s shoes by operation of law and acquired WaMu’s rights under the closing protection letter, and found nothing in the letter saying the lender would lose its right to be indemnified for the title agent’s fraud if the lender subsequently sold the loan.[11](#co_footnote_I80eabf50d6ee11ea8f41e1f6f2a) The court found that the FDIC sold the loan at a loss attributable to the title agent’s fraud.[12](#co_footnote_I80eabf51d6ee11ea8f41e1f6f2a)

One of title insurers’ concerns in this set of cases involving chains of assignees of the insured mortgage has been the risk of double liability. For example, in *FDIC v. First American Title Insurance Company*, First American argued:

The end result could well be double liability for an opposing party. After all, what is to stop New Bank from bringing its own [closing-protection-letter] claims against First American on these same [closing protection letters]? New Bank could simply contend that the Purchase Agreement did convey the [closing protection letters], and First American could do nothing to challenge it, forcing First American to indemnify two different parties for the same loss.[13](#co_footnote_I80eabf52d6ee11ea8f41e1f6f2a)

To avoid the possibility of claims by multiple lenders or assignees in a chain of assignments, ALTA revised its 2015 CPL to say the title insurer will be liable only to the holder of the indebtedness at the time payment is made.[14](#co_footnote_I80eabf53d6ee11ea8f41e1f6f2a)

Sellers are another group who may desire protection against losses due to errors and dishonesty of closing agents and approved attorneys in real estate transactions. Sellers of real estate are not covered in any of the ALTA standard closing protection letter forms. A seller certainly is concerned with whether the sale proceeds are appropriated correctly to the seller’s mortgagee, real estate agent, or lienors. Some underwriters may be willing to contract with individual sellers to give such protection. In Ohio, in fact, a statute requires title insurers to offer closing protection to sellers as well as purchasers, lenders, and any others who apply for title insurance in the transaction.[15](#co_footnote_I80eabf54d6ee11ea8f41e1f6f2a) In other states, mono-line insurance regulations may be an obstacle for sellers.[16](#co_footnote_I80eabf55d6ee11ea8f41e1f6f2a) Though sellers often pay for their buyer’s title insurance, the seller is not named as an insured under a title insurance policy issued in the transaction, making it possible for an insurance regulator to object that insuring the seller is not title insurance. Nevertheless, should an underwriter issue one of the standard closing protection letters to a seller in a real estate transaction, that underwriter will be estopped from subsequently claiming invalidity of the letter pursuant to state insurance regulations.[17](#co_footnote_I80eae662d6ee11ea8f41e1f6f2a)

A seller’s mortgagee also could lose money in the escrow setting. If a closing agent or approved attorney misappropriates purchase money paid into escrow rather than paying off the seller’s mortgage lien, does the seller’s mortgagee have a right of recovery based on the closing protection letter a title insurer issued to the purchaser or purchaser’s mortgagee? If not, could the title insurer be liable to a seller’s mortgagee on grounds that the approved closing agent or attorney was acting as the title insurer’s agent in handling the escrow funds? A seller’s mortgagee made both these claims in *GE Capital Mortg. Services, Inc. v. Privetera*.[18](#co_footnote_I80eae664d6ee11ea8f41e1f6f2a) The New Jersey court found that the seller’s mortgagee was not an intended third-party beneficiary of either the closing protection letter or the title insurance policy issued to the purchaser’s mortgagee. The court also held, based on the peculiar facts of *Privetera*, that the closing attorney was not acting as the title insurer’s agent when he took possession of the purchase money. The court was able to distinguish both *Sears Mortgage Corp. v. Rose*[19](#co_footnote_I80eae665d6ee11ea8f41e1f6f2a) and *Clients’ Security Fund v. Security Title and Guaranty Co.*,[20](#co_footnote_I80eae666d6ee11ea8f41e1f6f2a) discussed elsewhere in this chapter because in those cases the mortgagees’ title insurance policies instructed the closing attorneys to pay off existing mortgage liens with the proceeds from the sales. In *Privetera*, however, it was the bankruptcy court that ordered the sale and gave the closing attorney instructions regarding disbursements.[21](#co_footnote_I80eb0d70d6ee11ea8f41e1f6f2a) Therefore, the court found that, unlike the title insurer in *Sears Mortgage Corp. v. Rose* and *Clients’ Security Fund v. Security Title and Guaranty Co.*, the title insurer in *Privetera* did not exercise control over the closing attorney and was not in the best position to prevent the loss.

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| **Footnotes** | |
| [\*](#co_fnRef_I80ea2310d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I80ea2311d6ee11ea8f41e1f6f2aa78) | *See, generally*, [Escrow Disbursement Ins. Agency, Inc. v. American Title & Ins. Co., Inc., 550 F. Supp. 1192, 1982-83 Trade Cas. (CCH) ¶ 65159 (S.D. Fla. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982149567&pubNum=0000345&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I80ea4a20d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I80ea4a21d6ee11ea8f41e1f6f2aa78) | [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I80ea4a22d6ee11ea8f41e1f6f2aa78) | *See infra* Appendix [D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [D2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD2&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also infra* Appendix [D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I80ea7133d6ee11ea8f41e1f6f2aa78) | Another configuration involves a warehouse lender that funds loans and gives its own instructions to the agent but is not the mortgagee. The loan is closed in the name of the originator, and the warehouse lender takes a security interest under the UCC in the loan documents. |
| [6](#co_fnRef_I80ea7134d6ee11ea8f41e1f6f2aa78) | *See* ALTA’s 2008 Closing Protection Letters *infra* at Appendix [D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [US Bank Nat. Ass’n v. Lawyers Title Ins. Corp., 56 Conn. L. Rptr. 644, 2013 WL 3958304 (Conn. Super. Ct. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031218265&pubNum=0005289&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in A.3d* (Noting that using the ALTA 2008 closing protection letter form, “insured lenders can demand express coverage for ‘its successors and assigns, as their interests may appear,’ thus extending the letter’s protection to the secondary mortgage market purchasers.”). |
| [7](#co_fnRef_I80ea9840d6ee11ea8f41e1f6f2aa78) | *See, e.g.,* [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [First Financial Savings & Loan Association v. Title Insurance Company of Minnesota, 557 F. Supp. 654 (N.D. Ga. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983109380&pubNum=0000345&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I80ea9841d6ee11ea8f41e1f6f2aa78) | [US Bank Nat. Ass’n v. Lawyers Title Ins. Corp., 56 Conn. L. Rptr. 644, 2013 WL 3958304, \*4 (Conn. Super. Ct. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031218265&pubNum=0005289&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in A.3d*. |
| [9](#co_fnRef_I80ea9842d6ee11ea8f41e1f6f2aa78) | [F.D.I.C. v. First American Title Ins. Co., 611 Fed. Appx. 522 (11th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036163962&pubNum=0006538&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. denied, [136 S. Ct. 1165, 194 L. Ed. 2d 177 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037566635&pubNum=0000708&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [JPMorgan Chase Bank, N.A. v. First American Title Ins. Co., 750 F.3d 573, 88 Fed. R. Serv. 3d 648 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000506&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), as amended, (July 2, 2014) and cert. denied, [135 S. Ct. 2349, 192 L. Ed. 2d 143 (2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2035292363&pubNum=0000708&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I80ea9843d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming, [795 F. Supp. 2d 624, 631 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_4637_631&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_631). *See also* [F.D.I.C. v. First American Title Ins. Co., 611 Fed. Appx. 522 (11th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036163962&pubNum=0006538&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. denied, [136 S. Ct. 1165, 194 L. Ed. 2d 177 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037566635&pubNum=0000708&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I80eabf50d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming, [795 F. Supp. 2d 624, 631 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_4637_631&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_631). |
| [12](#co_fnRef_I80eabf51d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming, [795 F. Supp. 2d 624, 631 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_4637_631&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_631). *In accord* [F.D.I.C. v. First American Title Ins. Co., 611 Fed. Appx. 522 (11th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036163962&pubNum=0006538&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. denied, [136 S. Ct. 1165, 194 L. Ed. 2d 177 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037566635&pubNum=0000708&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I80eabf52d6ee11ea8f41e1f6f2aa78) | [F.D.I.C. v. First American Title Ins. Co., 611 Fed. Appx. 522, 529 (11th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036163962&pubNum=0006538&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_6538_529&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_6538_529), cert. denied, [136 S. Ct. 1165, 194 L. Ed. 2d 177 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037566635&pubNum=0000708&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I80eabf53d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transaction (12-01-2015) at Appendix D5 *infra*. |
| [15](#co_fnRef_I80eabf54d6ee11ea8f41e1f6f2aa78) | [Ohio Rev. Code Ann. § 3953.32](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000279&cite=OHSTS3953.32&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I80eabf55d6ee11ea8f41e1f6f2aa78) | *See supra* §§ [18:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a10&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [18:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a15&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing regulations prohibiting title insurers from issuing insurance besides title insurance. |
| [17](#co_fnRef_I80eae662d6ee11ea8f41e1f6f2aa78) | *See supra* [§ 18:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a15&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 81 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_162_81&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_81). |
| [18](#co_fnRef_I80eae664d6ee11ea8f41e1f6f2aa78) | [GE Capital Mortg. Services, Inc. v. Privetera, 346 N.J. Super. 424, 788 A.2d 324 (App. Div. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002055466&pubNum=0000162&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I80eae665d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I80eae666d6ee11ea8f41e1f6f2aa78) | [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [21](#co_fnRef_I80eb0d70d6ee11ea8f41e1f6f2aa78) | [GE Capital Mortg. Services, Inc. v. Privetera, 346 N.J. Super. 424, 432, 788 A.2d 324, 328 (App. Div. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002055466&pubNum=0000162&originatingDoc=I4ac4d0e5990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_162_328&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_328) (“[T]he Bankruptcy Court Order removing all liens from the property made the role played by the title insurance company in this case very different from the role played by the title insurance companies in the Sears and Clients’ Security Fund cases.”). |

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2 Title Ins. Law § 20:19 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I81015490d6ee11ea8f41e1f6f2a)**

§ 20:19. Title insurance underwriter’s liability for agents’ escrows and closings—Pursuant to closing protection letter—Nexus between title insurance policies and closing protection letters

Several courts and state insurance departments concluded that title insurers’ original closing protection letters were not themselves insurance policies.[1](#co_footnote_I81017ba0d6ee11ea8f41e1f6f2a) They reasoned either that closing protection letters did not fit within the state’s statutory definition of title insurance or that they did not spread risk according to the general definition of insurance.[2](#co_footnote_I8102b420d6ee11ea8f41e1f6f2a) If closing protection letters are considered to be insurance, states’ single-line insurance laws could prevent title insurers from issuing them or require title insurers to hold a license to sell surety or fidelity insurance.[3](#co_footnote_I8102b421d6ee11ea8f41e1f6f2a) This likely is the reason that title insurers in some states have not charged for the letter separately from the premium for title insurance.[4](#co_footnote_I8102db32d6ee11ea8f41e1f6f2a) Instead of being considered insurance themselves, in most states, closing protection letters are said to be issued “incidentally” to title insurance.[5](#co_footnote_I8102db33d6ee11ea8f41e1f6f2a)

Some courts, nevertheless, have held that Closing Protection Letters are so closely related to title insurance policies that they should be treated “as one and the same.”[6](#co_footnote_I8102db34d6ee11ea8f41e1f6f2a)

The question of whether closing protection letters are insurance may be an important threshold to courts’ decisions on several issues:

The answer to the question will affect a customer’s rights and remedies under a Closing Protection Letter and the insurer’s corresponding obligations. The rights and obligations that may be affected include: the insurer’s authority to issue Closing Protection Letters; the coverage that an insurer may offer under a Closing Protection Letter; whether the “good faith” obligation that an insurer has regarding policy claims applies to Closing Protection Letter claims; and whether a plaintiff may recover attorney’s fees in prosecuting a successful claim under a Closing Protection Letter.[7](#co_footnote_I81030240d6ee11ea8f41e1f6f2a)

Title insurers issue the letters to encourage large customers to purchase their company’s title insurance policies. Unlike most kinds of insurance agents, title insurance agents— whether local title companies or attorneys—do much more in the insured’s real estate transaction than sell a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)). The agent through whom the policy is purchased, in most states, also is the title examiner, escrow agent, and closing agent for the real estate transaction. Therefore, the lender and vendee need just as much assurance of the skill and professionalism of the title insurance agent as of the financial resources of the underwriter. Title insurance underwriters issue closing protection letters to persuade customers to trust their agents, so that their policies can be sold.[8](#co_footnote_I81030241d6ee11ea8f41e1f6f2a)

[The insured] sought to “insure” that it could close financing and refinancing transactions at a title company’s agent’s office without fear that its funds would be lost due to the “fraud or dishonesty” of the agent. In exchange for providing this assurance, [the title insurance underwriter] sold additional title policies through its agent.[9](#co_footnote_I81030242d6ee11ea8f41e1f6f2a)

An early case on closing protection letters erroneously characterized a title insurance underwriter’s payment under the letter as merely a voluntary payment “to save face” and, therefore, prohibited the title insurer from pursuing the maker of the note for reimbursement.[10](#co_footnote_I81032950d6ee11ea8f41e1f6f2a) Instead, the title insurance underwriter gives the letter in consideration for the insured’s buying its title insurance policy through its agent. In states where no separate fee is designated for the closing protection letter, its cost must be considered to be “built into the insurance premium.”[11](#co_footnote_I81032951d6ee11ea8f41e1f6f2a) Thus, though closing protection letters are considered incidental to the title insurance underwriter’s business of issuing title insurance policies for purposes of the underwriter’s authority to issue them, because consideration *is* given for the closing protection letter, breach of the insurer’s promises therein supports an action for breach of contract[12](#co_footnote_I81032952d6ee11ea8f41e1f6f2a) that is independent of any action on the title insurance policy.[13](#co_footnote_I81032953d6ee11ea8f41e1f6f2a)

Judicial interpretations of the measure of damages due an addressee under a closing protection letter support the view that the title insurer’s obligations under a Closing Protection Letter are separate from those under the policy. See *infra* [§ 20:20](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a20&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Additionally, in jurisdictions that have found a Closing Protection Letter to be separate from the policy, if a title insurance policy was never issued because the underwriter’s requirements for issuing it were never met, a lender who entrusted funds and documents to a closing agent still could have a claim against the underwriter under a Closing Protection Letter. This result certainly is proper when the closing agent failed to follow the lender’s instructions to satisfy the underwriter’s requirements for issuance of a policy. Thus, in 1972, *Lawyers Title Insurance Corp. v. Edmar Construction Company, Inc.*, the court found that where the commitment for title insurance required pay-off of a prior lien and the closing agent failed to follow the lender’s instructions to pay off the prior lien with funds delivered by the lender, the underwriter was liable under the Closing Protection Letter despite the fact that the underwriter refused to issue a title insurance policy due to the continuing existence of the prior lien.[14](#co_footnote_I81035060d6ee11ea8f41e1f6f2a) ALTA’s 2011 and subsequent CPLs attempted to modify this result by stating that the CPL’s coverage is subject to the condition that “the Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction.”[15](#co_footnote_I81035061d6ee11ea8f41e1f6f2a) If it is because of the agent’s taking funds or failing to follow closing instructions that an underwriter’s requirements are not met and the underwriter is not obligated to issue a policy, however, the underwriter still should be responsible for the agent’s malfeasance, like the underwriter in *Lawyers Title Insurance Corp. v. Edmar Construction Company, Inc.*

The CPL’s characterization as a contract that is incidental to the issuance of title insurance, and not itself a separate insurance policy, has raised other questions about the nexus between the letter and the policy. For example, the 1987–1998 [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Closing Protection Letters did not contain a mandatory arbitration condition. Nevertheless, because the policy’s arbitration condition includes as “arbitrable matters” “any controversy” relating to “any service” “in connection with” the policy’s issuance or any “other obligation” of the title insurer,[16](#co_footnote_I81035062d6ee11ea8f41e1f6f2a) title insurers were permitted to require that a claim under a closing protection letter be submitted to arbitration.[17](#co_footnote_I81035063d6ee11ea8f41e1f6f2a) ALTA CPLs now contain their own arbitration provision.[18](#co_footnote_I81035064d6ee11ea8f41e1f6f2a)

Furthermore, “because a claim of bad faith denial of insurance benefits can only arise under an insurance policy,” insureds cannot maintain bad faith claims in jurisdictions where Closing Protection Letters are not considered to be insurance.[19](#co_footnote_I81035065d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I81015490d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I81017ba0d6ee11ea8f41e1f6f2aa78) | *See* [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming, [795 F. Supp. 2d 624 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bank of America, NA v. First American Title Ins. Co., 2014 WL 1271227, \*7 (Mich. Ct. App. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2032990490&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Not Reported in N.W.2d); [Bancorp Bank v. Lawyers Title Ins. Corp., 2014 WL 3325861 (E.D. Pa. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033796857&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Heritage Pacific Financial, LLC v. First American Title Ins. Co., 2013 WL 4401040, \*5 n. 16 (D. Md. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031305474&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in F.Supp.2d,* citing [Palomar, Title Insurance Law § 20:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=0152721&cite=TITLEINSLs20%3a19&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Freedom Mortg. Corp. v. Burnham Mortg., Inc., 720 F. Supp. 2d 978, 1003 (N.D. Ill. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022319524&pubNum=0004637&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_4637_1003&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1003) (“[T]he [closing protection letter] is a contract of indemnification, … not an insurance policy.”); [Escrow Disbursement Ins. Agency, Inc. v. American Title & Ins. Co., Inc., 550 F. Supp. 1192, 1982-83 Trade Cas. (CCH) ¶ 65159 (S.D. Fla. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982149567&pubNum=0000345&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (reasoning that closing protection letters do not spread risk, which is a defining characteristic of insurance under the McCarren-Ferguson Act); [Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 288 Ga. App. 642, 655 S.E.2d 269 (2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014214810&pubNum=0000711&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Metmor Financial, Inc. v. Commonwealth Land Title Ins. Co., 645 So. 2d 295 (Ala. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993165211&pubNum=0000735&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (closing protection letter did not fit state’s statutory definition of title insurance because it did not insure “against loss by encumbrance, or defective titles, or invalidity or adverse claim to title”). |
| [2](#co_fnRef_I8102b420d6ee11ea8f41e1f6f2aa78) | “Closing protection letters undoubtedly are indemnity agreements, but not all indemnity agreements are insurance policies. Although the meaning of ‘insurance’ may vary from state to state, many jurisdictions hold that a defining characteristic of insurance is the establishment of a fund for the purpose of spreading risk. Where closing protection letters are issued without charge, some courts have held that they do not spread risk and, therefore, do not constitute insurance.” Davis, Are Closing Protection Letters Insurance? Title Insurance Litigation Committee Newsletter, P. 3 (Summer 2000). *See also* [Heritage Pacific Financial, LLC v. First American Title Ins. Co., 2013 WL 4401040, \*4 (D. Md. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031305474&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d* (CPL is not within statute’s definition of title insurance.). |
| [3](#co_fnRef_I8102b421d6ee11ea8f41e1f6f2aa78) | *See* §§ [18:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a10&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [18:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a15&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), considering the New York Insurance Commissioner’s ruling that the standard closing protection letter is in the nature of fidelity or surety insurance and other states’ regulations limiting the content of closing protection letters. |
| [4](#co_fnRef_I8102db32d6ee11ea8f41e1f6f2aa78) | A state that regulates rates that may be charged for title insurance may designate charges for closing protection letters. For example, the Pennsylvania Department of Insurance expressly approves the issuance of closing protection letters and set a charge, effective October 1, 2000, of $35 per letter, paid by the borrower to the underwriter, with no share going to the agent. |
| [5](#co_fnRef_I8102db33d6ee11ea8f41e1f6f2aa78) | *See* [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*6 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Closing protection letters are considered indemnification contracts”); [Regions Bank v. Stewart Title Guar. Co., 2015 WL 433486, \*5 (D.S.C. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2035378395&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citing Palomar, Title Insurance Law § 20:19); [Fleet Mortg. Corp. v. Lynts, 885 F. Supp. 1187 (E.D. Wis. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995101232&pubNum=0000345&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 80, 761 N.W.2d 832, 843 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_595_843&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_843). *See also* [Heritage Pacific Financial, LLC v. First American Title Ins. Co., 2013 WL 4401040, n.16 (D. Md. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031305474&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d* (“that a CPL is not an independent title insurance policy does not mean that the two agreements are completely unrelated”). |
| [6](#co_fnRef_I8102db34d6ee11ea8f41e1f6f2aa78) | [Bancorp Bank v. Lawyers Title Ins. Corp., 2014 WL 3325861, \*5 (E.D. Pa. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033796857&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *citing* [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 418 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_4637_418&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_418), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“CPLs are integral to title insurance policies.”); [Santiago v. Eastern Sav. Bank, FSB, 2011 WL 710216 (E.D. Pa. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2024695328&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A[CPL] is a document that is part of the process for obtaining title insurance.”); [Ticor Title Ins. Co. v. National Abstract Agency, Inc., 2008 WL 2157046, \*6 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016169233&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (explaining that CPL is “an integral part of the title insurance business”); [Fleet Mortg. Corp. v. Lynts, 885 F. Supp. 1187, 1190 (E.D. Wis. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995101232&pubNum=0000345&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_345_1190&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1190) (stating that CPLs “are related to the issuance of title insurance policy and are not a separate, unrelated service” and “concomitant with the issuance of title insurance policies). *See also* [Wells Fargo Bank, N.A. v. Bank of America, N.A., 2013 WL 372149, \*6 (S.D. N.Y. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029775371&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (stating that at the motion to dismiss stage in breach of contract action, “this Court is not able to determine that the parties did not intend the CPL and the Title Policy to be read as a single contract”); [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Closing protection letter is “part and parcel” of title insurance policy); [Fla. Stat. Ann. § 627.786](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.786&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Tex. Ins. Code, art. 9. |
| [7](#co_fnRef_I81030240d6ee11ea8f41e1f6f2aa78) | Davis, Are Closing Protection Letters Insurance? Title Insurance Litigation Committee Newsletter, P. 4 (Summer 2000). |
| [8](#co_fnRef_I81030241d6ee11ea8f41e1f6f2aa78) | [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*5 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Heritage Pacific Financial, LLC v. First American Title Ins. Co., 2013 WL 4401040, \*6 (D. Md. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031305474&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Not Reported in F.Supp.2d); and [Fifth Third Mortgage-MI, L.L.C. v. Hance, 2011 WL 4501573, \*3 (Mich. Ct. App. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026252042&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), appeal denied, [493 Mich. 862, 820 N.W.2d 910 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028744517&pubNum=0000595&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Not Reported in N.W.2d). |
| [9](#co_fnRef_I81030242d6ee11ea8f41e1f6f2aa78) | [American Title Ins. Co. v. Variable Annuity Life Ins. Co., 1996 WL 544431 (Tex. App. Houston 14th Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996218263&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Apr. 18, 1997) (nonpublished case). *Accord* [Bank of America, NA v. First American Title Ins. Co., 2014 WL 1271227, \*7 (Mich. Ct. App. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2032990490&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Not Reported in N.W.2d); [EnTitle Ins. Co. v. Darwin Select Ins. Co., 2013 WL 422712, \*5 (N.D. Ohio 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029792183&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming [795 F. Supp. 2d 624, 630 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_4637_630&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_630) and quoting [Palomar, Title Insurance Law § 20:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=0152721&cite=TITLEINSLs20%3a11&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 80, 761 N.W.2d 832, 843 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_595_843&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_843); [Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 288 Ga. App. 642, 655 S.E.2d 269 (2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014214810&pubNum=0000711&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“In an effort to induce New Freedom to purchase title insurance, Lawyers Title issued to New Freedom an indemnification agreement known in the insurance industry as a ‘Closing Protection Letter’ (‘CPL’).” Regarding a title insurance underwriter’s identification of “approved attorneys,” *see* [Meyerson v. Lawyers Title Ins. Corp., 39 A.D.2d 190, 333 N.Y.S.2d 33 (1st Dep’t 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972120560&pubNum=0000602&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), order aff’d, [33 N.Y.2d 704, 349 N.Y.S.2d 675, 304 N.E.2d 371 (1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973280027&pubNum=0000578&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“The arrangement … constitutes a convenience to the [underwriter and attorney] and their clients, obviously to induce them to insure with [the particular title insurance underwriter].”). |
| [10](#co_fnRef_I81032950d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. Edmar Const. Co., Inc., 294 A.2d 865, 868 (D.C. 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972101701&pubNum=0000162&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_162_868&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_868) (“In effect, Lawyers Title offered as a business gesture to indemnify the lender if a defalcation by an approved attorney occurred.”). |
| [11](#co_fnRef_I81032951d6ee11ea8f41e1f6f2aa78) | *See* [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*5 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [FDIC v. Attorneys’ Title Ins. Fund, Inc., 2014 WL 4384270, \*4 (S.D. Fla. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2034295582&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), on reconsideration in part, (11th Circ. 15-11224, 15-11466) [2015 WL 11784950 (S.D. Fla. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039646032&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and appeal dismissed, (11th Circ. 15-11224, 15-11466) (Oct. 21, 2015) (citing [*JP Morgan Chase Bank*, 750 F.3d at 579](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000506&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_506_579&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_579)); [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“[Southern Mortgage Associates] also required a ‘closing-protection letter’ from the title-insurance company. The letter protected SMA against the risk of loss resulting from the fraud or theft of the buyer’s closing attorney, who was designated as the title company’s ‘approved attorney’ for the purposes of the closing. Alliance did not charge SMA for the protection afforded through the letter; rather, the cost of that protection was built into the insurance premium charged and paid for by Hart.”). *See also* [Fleet Mortg. Corp. v. Lynts, 885 F. Supp. 1187 (E.D. Wis. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995101232&pubNum=0000345&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“It is apparent that the general perception of Closing Protection Letters within the industry is that they are related to the issuance of the title insurance policy and are not a separate, unrelated service.”); [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lawyers Title Ins. Corp. v. Edmar Const. Co., Inc., 294 A.2d 865 (D.C. 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972101701&pubNum=0000162&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I81032952d6ee11ea8f41e1f6f2aa78) | *See generally* [Bank of America, NA v. First American Title Ins. Co., 2016 WL 1453254 (Mich. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I81032953d6ee11ea8f41e1f6f2aa78) | *See* [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming [795 F. Supp. 2d 624, 629 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_4637_629&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_629) (purchase of title policy is consideration that supports insurer’s indemnification promise in closing protection letter); [Bank of America, NA v. First American Title Ins. Co., 2014 WL 1271227, \*7 (Mich. Ct. App. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2032990490&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (Not Reported in N.W.2d); [Fifth Third Mortgage-MI, L.L.C. v. Hance, 2011 WL 4501573, \*3 (Mich. Ct. App. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2026252042&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), appeal denied, [493 Mich. 862, 820 N.W.2d 910 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028744517&pubNum=0000595&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in N.W.2d.*; [Lehman Bros. Holdings, Inc. v. Hirota, 2007 WL 1471690 (M.D. Fla. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012299274&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that lender’s allegations that closing agent failed to disclose secondary financing of the properties and the borrower’s excessive closing cost payments sufficed to support a claim against the closing agent for breach of closing instruction contract and closing protection letter); [New Freedom Mortg. Corp. v. Globe Mortg. Corp., 281 Mich. App. 63, 80, 761 N.W.2d 832, 843 (2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016695443&pubNum=0000595&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_595_843&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_595_843), *overruled on other grounds by* [Bank of America, NA v. First American Title Ins. Co., 2016 WL 1453254 (Mich. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 288 Ga. App. 642, 655 S.E.2d 269, 274 (2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014214810&pubNum=0000711&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&fi=co_pp_sp_711_274&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_274). |
| [14](#co_fnRef_I81035060d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. Edmar Const. Co., Inc., 294 A.2d 865 (D.C. 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972101701&pubNum=0000162&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I81035061d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transaction (12-01-2015) at Appendix D5 *infra*. |
| [16](#co_fnRef_I81035062d6ee11ea8f41e1f6f2aa78) | ALTA Owner’s Policy (Oct. 17, 1992), Conditions & Stipulations ¶ 14; ATLA Loan Policy (Oct. 17, 1992), Conditions & Stipulations ¶ 13. |
| [17](#co_fnRef_I81035063d6ee11ea8f41e1f6f2aa78) | [Chassen v. Fidelity Nat. Financial, Inc., 2012 WL 4120902 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028654051&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *Not Reported in F.Supp.2d;* [Fleet Mortg. Corp. v. Lynts, 885 F. Supp. 1187 (E.D. Wis. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995101232&pubNum=0000345&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I81035064d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transaction (12-01-2015) at Appendix D5 *infra*. |
| [19](#co_fnRef_I81035065d6ee11ea8f41e1f6f2aa78) | [Bancorp Bank v. Lawyers Title Ins. Corp., 2014 WL 3325861, \*7 (E.D. Pa. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033796857&pubNum=0000999&originatingDoc=I4ac4d0e8990d11dd8501e2146fe01457&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:20 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I81268fd0d6ee11ea8f41e1f6f2a)**

§ 20:20. Title insurance underwriter’s liability for agents’ escrows and closings—Pursuant to closing protection letter—Measure of loss under closing protection letters

Several questions have arisen about the amount an addressee is entitled to recover under a closing protection letter. What is the measure of an addressee’s “actual loss” and the title insurer’s liability under a closing protection letter? When has the addressee sustained an actual loss? Does the policy’s [**integration clause**](http://practicallawconnect.thomsonreuters.com/Document/I61c43678677d11e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) bring the closing protection letter under the policy’s conditions and stipulations, so that the policy’s limitations on the measure of loss and the insurer’s liability control? Likewise, since the closing protection letter is separate from the policy for purposes of state insurance regulations on single-line insurance, is it separate from the policy for purposes of measuring the recipient’s damages?

A [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is a promise to indemnify if loss results from a title defect, not a guarantee of the status of title.[1](#co_footnote_I8127ef60d6ee11ea8f41e1f6f2a) Analogously, the closing protection letter is a promise to reimburse if loss results from an agent’s failure to follow closing instructions or to apply settlement funds honestly,[2](#co_footnote_I8127ef62d6ee11ea8f41e1f6f2a) not a guarantee that the agent will not err or use settlement funds dishonestly. Thus, if, despite the agent’s error or fraud, the addressee recovers the full amount of money entrusted to the agent and suffers no other actual losses, then the addressee has no claim under the closing protection letter.[3](#co_footnote_I8127ef63d6ee11ea8f41e1f6f2a)

When the addressee has sustained an “actual loss” “in connection with” a closing, however, pre-2011 [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) closing protection letters did not limit the addressee’s recovery to only the settlement funds lost or the amount recoverable under the terms of the title insurance policy. Pre-2011 ALTA Closing Protection Letters agreed to reimburse for “actual loss incurred” “in connection with such closing” when such “loss arises out of” the agent’s fraud, dishonesty, or negligence in handling the lender’s funds or documents or failing to comply with closing instructions relating to the status of the title, obtaining necessary documents, or disbursing funds.[4](#co_footnote_I8127ef64d6ee11ea8f41e1f6f2a)

Nowhere did the pre-2011 CPL limit the actual loss payable to reimbursement of funds given to the agent or attorney for settlement or closing. The cases of *Herget* [**National Bank**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1974f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) *v. U.S. Life Title Insurance Company* and *First Financial Savings & Loan Association v. Title Insurance Company of Minnesota* have been cited for the proposition that a closing protection letter covers only the loss of settlement funds and no consequential or incidental damages, but they are clearly distinguishable.[5](#co_footnote_I81281671d6ee11ea8f41e1f6f2a) The insured closing letters issued in those cases were not standard ALTA forms. Instead, the letter in *Herget* only agreed to “reimburse for any loss *of your settlement funds* transmitted by you to [our issuing agent].”[6](#co_footnote_I81281672d6ee11ea8f41e1f6f2a) The letter in *First Financial* similarly promised, according to the court, only to “reimburse … for any loss *of settlement funds* transmitted to [the agents] due to their … fraud or dishonesty….”[7](#co_footnote_I81281673d6ee11ea8f41e1f6f2a) Thus, the measure of the addressee’s actual loss under closing protection letters that are not so limited should include *at least* the settlement funds lost due to the agent’s errors or fraud.

If the closing agent or attorney defalcates with funds intended to pay off a seller’s mortgage, the insurer has been obligated to pay off the prior mortgage for the benefit of the addressee who was intended to receive a first lien or a clear title to the property.[8](#co_footnote_I81281674d6ee11ea8f41e1f6f2a) Because misappropriation of funds delivered to the agent to pay the seller or a prior lienor could cause more damage to the buyer or lender than simply the loss of that money, such damage also may be considered encompassed in the pre-2011 CPLs’ broad promise to reimburse the addressee’s “actual loss” “in connection with such closing.”

Neither did pre-2011 ALTA closing protection letters expressly contain or incorporate the title insurance policy’s conditions limiting the amount of the insured’s loss for which the insurer is liable.[9](#co_footnote_I81283d80d6ee11ea8f41e1f6f2a) Courts construing those letters, therefore, awarded what they deemed to be the addressee’s true actual loss, not actual loss as defined or limited by the title insurance policy. Thus, the measure of the addressee’s “actual loss” under the letters has included even the amount of loan funds that exceeded the value of the land subject to the lender’s insured lien, when the addressee was unable to recover the excess amount because of the title agent’s fraud or error.[10](#co_footnote_I81286491d6ee11ea8f41e1f6f2a)

For example, in *FDIC v. First American Title Insurance Company*, the Eleventh Circuit Court of Appeals rejected the title insurer’s argument that the FDIC had no actual damages from its agent’s dishonesty or failure to follow instructions because the lender did receive and foreclose on first-priority liens and could have sought a deficiency judgment against the borrower for amounts that had not been paid as the closing instructions required. The Court held that the phrase “loss arising out of” requires only a “minimal causal relationship,” and that “[a]lthough [the lender] received a first-priority lien on each [property], [the lender] lacked the bargained-for benefit of an honest, diligent closing agent and a borrower both invested in the units and motivated to repay the loans.”[11](#co_footnote_I81286492d6ee11ea8f41e1f6f2a) The Eleventh Circuit Court further held that the FDIC’s actual loss was the full amount of the loan given in reliance on its belief in the agent’s having followed closing instructions, not merely the much lower foreclosure sales proceeds from the property to which a lender might be restricted by a title insurance policy.[12](#co_footnote_I81286493d6ee11ea8f41e1f6f2a)

Similarly, in *Regions Bank v. Commonwealth Land Title Insurance Company*, Commonwealth argued it was entitled to summary judgment on grounds that it already had paid for its agent’s failure to follow closing instructions by giving Regions the fair market value of the borrower’s home against which the agent had failed to obtain a first lien plus proceeds from foreclosing on an equitable lien on another property. This may have satisfied the insurer’s obligation to pay “actual loss” under a lender’s title insurance policy’s limits. Citing with approval the Eleventh Circuit Court’s decision in *FDIC v. First American Title Insurance Company*, however, the U.S. District Court for the Northern District of Alabama denied summary judgment, saying that the agent’s failure to record the insured mortgage as the closing instructions required also “deprived [the lender] of a borrower who was motivated to repay the Loan.”[13](#co_footnote_I81286494d6ee11ea8f41e1f6f2a) Given its approval of the Eleventh Circuit Court’s reasoning and result in *FDIC v. First American Title Ins. Co.*, had its opinion not been merely on a motion for summary judgment, the court in Regions Bank likely would have gone on to hold that the lender was entitled to recover the full amount of its loan.

Additionally in *First American Title Insurance Co. v. Vision Mortgage Corp*,[14](#co_footnote_I81288ba0d6ee11ea8f41e1f6f2a) Vision Mortgage Corp. had approved a loan and obtained a lender’s title insurance policy from First American. First American also gave Vision Mortgage a closing protection letter that protected Vision Mortgage for losses caused by its approved attorney’s fraud or dishonesty. Ultimately, it was determined that the borrower was a fictitious person created by the approved attorney. When no mortgage payments were made, Vision Mortgage foreclosed and notified First American. First American contended that the closing protection letter was only meant to secure first-lien status together with the policy, and, since Vision Mortgage received a first lien, it had no indemnifiable loss under either the letter or the policy. First American claimed that any loss Vision Mortgage sustained was caused by its lending more than the value of the land subject to its first lien.

The court acknowledged that, under a closing protection letter, even if the agent or approved attorney commits fraud, the addressee will not have a claim if the addressee recoups his full bargain and does not sustain a loss. However, in this case, the fact that the borrower did not exist guaranteed an immediate default and eliminated the possibility of the mortgagee’s recovering on a deficiency judgment.[15](#co_footnote_I81288ba1d6ee11ea8f41e1f6f2a) “Thus, of the three remedies for which a lender bargains in a bona fide transaction (payment, foreclosure and recovery of any deficiency), only one was available to Vision Mortgage (foreclosure) as a direct result of [the attorney’s] fraud.”[16](#co_footnote_I81288ba2d6ee11ea8f41e1f6f2a) The court concluded that the mortgagee’s loss was caused by the approved attorney’s fraud, within the terms of the closing protection letter, regardless of the insured mortgagee’s overvaluation of the property. The *Vision Mortgage* decision further illustrates that the title insurer’s obligation to indemnify under a closing protection letter is not limited by the terms of the title insurance policy.[17](#co_footnote_I81288ba3d6ee11ea8f41e1f6f2a)

Citing *First American Title Ins. Co. v. Vision Mortgage Corp., Inc.,* the U.S. District Court for the Northern District of Illinois agreed that ability to foreclose on the mortgage lien does not mean an insured lender has no “actual loss” under a closing protection contract as it might under a loan title insurance policy.[18](#co_footnote_I81288ba4d6ee11ea8f41e1f6f2a)

… Plaintiff was able to successfully foreclose on the mortgage despite Traditional Title’s alleged non-compliance with the closing instructions. Chicago Title appears to urge that the upshot of this successful foreclosure is that Plaintiff was made whole—that in the end, Fifth Third received no less than what it bargained for. This is an implausibly short-sighted assessment of the circumstances underlying this transaction.

It may well be that a foreclosure, even at a severe loss, that arises as a result of, say, a downturn in the real estate market, still leaves a lender with no less than what the lender bargained for. A foreclosure that arises because the borrower was fraudulently manufactured (that is, the borrower for all practical purposes did not exist) is another story—Plaintiff bargained for a bona fide borrower. Without that, an immediate default was all but guaranteed. Taking Plaintiff’s allegations as true, the sham-nature of the bargain cannot be excused or ignored simply because one of the remedies that would have been available to Plaintiff had the transaction been legitimate remained available to the Plaintiff despite the fraud. *Cf.* [*First American Title Insurance Company v. Vision Mortgage Corporation, Inc.,* 298 N.J.Super. 138, 689 A.2d 154, 157 (N.J.Super.Ct.App.Div.1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997057364&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_157&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_157). Plaintiff has adequately pled an actual loss for which Chicago Title could be liable under the CPC.[19](#co_footnote_I8128b2b3d6ee11ea8f41e1f6f2a)

In its 2008 revision of its closing protection letters, ALTA added the following exclusion: “Any liability of the Company for loss does not include liability for loss resulting from … the failure of any collateral to adequately secure a loan connected with a real estate transaction.”[20](#co_footnote_I8128b2b4d6ee11ea8f41e1f6f2a) This might have been intended to prevent awards like those in the preceding cases of more than the land’s market value though the lender received a first-priority lien which the lender was able to foreclose. The lender, then, would bear ultimate responsibility if the loan amount is greater than the value of the land securing the loan, regardless of the agent’s acts.

The court’s decision in *American Title Insurance Co. v. Variable Annuity Life Insurance Co.*[21](#co_footnote_I8128d9c1d6ee11ea8f41e1f6f2a) further supports the view that recovery under a closing protection letter is separate from recovery under the policy, because even termination of the policy by payment of policy limits did not relieve the title insurer of its separate obligation under a pre-2011 closing protection letter to pay additional losses caused by the title agent’s errors or defalcation. American Title had issued the lender in a refinancing transaction an insured closing letter that promised to replace settlement funds that were lost as a result of the fraud or dishonesty of American Title’s closing agent, Summit Title Company. Summit was given a check from the refinancing lender, Variable Annuity, to pay off the prior lienor, Morian. When Morian attempted to cash the check Summit gave her, it was returned for insufficient funds. Summit went out of business shortly thereafter. Morian’s estate subsequently initiated proceedings to foreclose its first lien. Variable Annuity demanded that American Title honor the insured closing letter and pay the outstanding balance on the Morian loan. This would have put Variable Annuity in the first lien position it would have held had Summit not misappropriated the funds to pay off Morian.

American Title instead tendered to Variable Annuity the policy limits of its title insurance policy, minus the payments the borrower had made, in full satisfaction of policy liability.[22](#co_footnote_I8128d9c2d6ee11ea8f41e1f6f2a) This did reimburse Variable Annuity for “the full amount of the funds it had loaned.” In an effort to prevent foreclosure by the Morian estate, Variable Annuity paid the Morian estate the amount of the principal, interest, and attorney’s fees that had accrued on its debt since 1986. Variable Annuity then sued American Title for the difference between what it had to pay the Morian estate and what American Title had paid under the loan policy.

The appellate court held that American Title’s payment of the loan policy limits had compensated Variable Annuity for not having the first lien as insured, but did not address Variable Annuity’s costs from pending lawsuits by its borrower and the prior lender resulting from Summit’s defalcation.[23](#co_footnote_I8128d9c3d6ee11ea8f41e1f6f2a) The court also found that Variable Annuity’s payment of the prior lien was not voluntary and that, having denied liability under the insured closing letter, American Title waived the right to consent to Variable Annuity’s settlement of the prior lien. The court concluded that Summit’s defalcation was exactly what the insured closing letter anticipated. Accordingly, the court awarded Variable Annuity the additional amount it paid to the Morian estate in settlement of the prior lien.[24](#co_footnote_I8128d9c4d6ee11ea8f41e1f6f2a) ALTA’s 2011 CPL amendments attempted to resolve this issue and limit the underwriter’s liability by stating that payment to the insured under the policy shall reduce the underwriter’s liability under the CPL.[25](#co_footnote_I8128d9c5d6ee11ea8f41e1f6f2a)

When measuring the amount of a lender’s loss payable under a closing protection letter, the point in time when the loss actually occurs also may be an issue. When the loss actually occurs depends on the facts of the case, not merely on the language of the closing protection letter. When the closing agent diverts loan funds and the intended mortgage lien is never created, it has been held the lender’s actual loss from the closing agent’s fraud occurs and should be measured when the agent diverted the funds received from the lender to the closing agent’s own use, not when the lender subsequently discovered the fraud and sold the loan at book value.[26](#co_footnote_I812900d2d6ee11ea8f41e1f6f2a)

In comparison, when the insured lien was created, but the closing agent’s failures to follow closing instructions and disclose prior liens resulted in the lien being fourth in priority, the lender and its assignees were held to not suffer actual loss until foreclosure sale left the insured lien unpaid.[27](#co_footnote_I812900d3d6ee11ea8f41e1f6f2a)

Somewhat surprisingly, in its 2008 revision of its standard closing protection letters, ALTA did not expressly limit the underwriter’s liability to the settlement funds the addressee entrusts to the agent or the amount of the addressee’s title insurance policy.[28](#co_footnote_I812900d4d6ee11ea8f41e1f6f2a) Usually those amounts and the amount the agent has the opportunity to misappropriate will be the same, but *American Title Insurance C. v. Variable Annuity Life Insurance Co.*, illustrates how an addressee’s loss may exceed the amount the agent actually misappropriates.

ALTA’s 2011 amendment subsequently did limit the underwriter’s liability to the funds entrusted to the agent or attorney and added other limitations to resolve some of the issues discussed above. The 2014 ALTA CPLs continue these limitations, stating that the underwriter’s liability under the CPL shall not exceed the least of:

1. (a) the amount of the addressee’s funds;
2. (b) the underwriter’s liability under the policy at the time written notice of a claim is made on the CPL;
3. (c) the value of the lien of the insured mortgage; or
4. (d) the value of the title insured or to be insured under the policy at the time written notice of a claim is made on the CPL.[29](#co_footnote_I812a6060d6ee11ea8f41e1f6f2a)

ALTA’s 2011 CPL separately on its first page made the underwriter’s agreement to indemnify subject to “the aggregate of all Funds” the addressee transmitted being no more than a stated amount. ALTA’s 2015 revision did the same, but also added that stated maximum as limitation (e) in this condition.[30](#co_footnote_I812a6063d6ee11ea8f41e1f6f2a)

One question must be asked regarding the ALTA 2014 and 2015 CPLs’ limit (b): “the underwriter’s liability under the policy at the time written notice of a claim is made under this letter.” If the policy limit controls when notice of a claim is made on this CPL, does the CPL essentially lose effectiveness once the policy is issued? Does this, along with other changes discussed *supra* [§ 20:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a18&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) mean a 2014 or 2015 closing protection letter provides coverage only from the date of closing until the policy is issued? Since the Commitment for title insurance essentially does that already,[31](#co_footnote_I812a8771d6ee11ea8f41e1f6f2a) one must ask in each transaction how much additional value these CPLs give.

Separate from the question of the amount the title insurer must pay *under the closing protection letter’s terms* is the question of the damages an addressee may recover if the insurer is found to have *breached the letter’s contract* to indemnify for the addressee’s actual loss. For example, in letters discussed above that restrict the promise of indemnification only to “settlement funds,” the insurer arguably has not promised to also reimburse for attorney’s fees the addressee spends to recover those settlement funds. However, if an underwriter breached the closing letter’s contract entirely, that breach of contract may entitle the addressee to attorney’s fees in states that permit recovery of attorney’s fees by the successful party in actions for breach of contract.[32](#co_footnote_I812a8773d6ee11ea8f41e1f6f2a) Additionally, though the closing letter is not itself an insurance policy, because it is incidental to the title insurance policy, the addressee has been held to be entitled to recover attorney’s fees spent to enforce the addressee’s rights under the letter pursuant to state statutes that permit an award of counsel fees in actions upon insurance policies.[33](#co_footnote_I812a8774d6ee11ea8f41e1f6f2a)

In comparison, however, courts have held that, if a closing protection letter is not considered to be a policy of insurance, statutory penalties for bad-faith denial of an insurance claim are not available.[34](#co_footnote_I812a8775d6ee11ea8f41e1f6f2a) Additionally, since an action against a title insurer on a closing protection letter is in contract and is not an action for fraud against the agent, punitive damages to which a plaintiff might be entitled in an action for fraud are not available.[35](#co_footnote_I812aae80d6ee11ea8f41e1f6f2a)

ALTA Closing Protection Letters expressly decline to protect addressees against loss of their settlement funds while on deposit with a bank due to a bank failure, unless the agent failed to deposit the funds in another bank specifically named in the closing instructions.[36](#co_footnote_I812aae81d6ee11ea8f41e1f6f2a) Neither are ALTA Closing Protection Letters intended to cover an escrow agent’s disbursement of construction loan proceeds. ALTA’s 1987–1998, 2011, 2014 and 2015 letters expressly exclude mechanic’s and material liens in connection with an addressee’s purchase, lease or construction loan transactions, as do the 2008 letters within their broader exclusion of all “defects, liens, encumbrances or other matters.”[37](#co_footnote_I812aae85d6ee11ea8f41e1f6f2a) For coverage of construction loan disbursements, a lender or purchaser should consider endorsements to its title insurance policy. The ALTA Construction Loan Policy is reproduced at [Appendix G](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPG&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to this treatise and Construction Loan Endorsements are discussed at [§ 9:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs9%3a9&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at [Appendix G1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPG1&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

Upon payment of the addressee’s loss under a closing protection letter, the title insurer becomes subrogated to the position of the addressee.[38](#co_footnote_I812ad595d6ee11ea8f41e1f6f2a) However, whether those rights will benefit the insurer is complicated when the insurer has issued title insurance policies to both the lender and the borrower.[39](#co_footnote_I812afca0d6ee11ea8f41e1f6f2a) For example, if an approved attorney steals funds that were to be used to satisfy a pre-existing mortgage, the insurer may seek to purchase the preexisting mortgage by paying the amount due and taking an assignment of the mortgage. If the title insurer obtains an assignment, it may protect its new insured lender by subordinating the preexisting mortgage and providing the new lender with first-mortgage status.[40](#co_footnote_I812afca1d6ee11ea8f41e1f6f2a) However, the insurer then would want to foreclose on what has become the second mortgage. “The title insurer, in effect, would recoup its loss by moving against its own insured, the purchaser of the property, who paid for the title insurance.”[41](#co_footnote_I812afca2d6ee11ea8f41e1f6f2a) This likely would not be permitted under the equitable principles of subrogation. See §§ [8:10](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a10&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [8:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs8%3a16&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Thus, the title insurer would have to pay off the preexisting mortgage but not be able recoup its loss.[42](#co_footnote_I812afca5d6ee11ea8f41e1f6f2a)

Like title insurance policies, closing protection letters provide that the title insurer’s liability is reduced to the extent an insured impairs the title insurer’s right of subrogation. In the context of a closing protection letter, the lender’s selling the loan after notice of an agent’s fraud does not impair all the title insurer’s subrogation rights. Though the title insurer would not then be able to foreclose the loan and pursue a deficiency judgment against the borrower, the title insurer still may step into the shoes of the defrauded lender and sue the title agent and others for fraud.[43](#co_footnote_I812afca6d6ee11ea8f41e1f6f2a)

***Does a Full Credit Bid prevent recovery on a Closing Protection Letter?***

Title insurance policies also provide that the title insurer’s liability is reduced by the amount of payments on the indebtedness secured by the insured mortgage.[44](#co_footnote_I812b23b0d6ee11ea8f41e1f6f2a) Title insurers have contended that either a lender’s full [**credit bid**](http://practicallawconnect.thomsonreuters.com/Document/I03f4dafeeee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) in foreclosure, or a lender’s failure to obtain a deficiency judgment against the debtor following a lower bid, equals a full “payment” of the indebtedness. [Section 6:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a19&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra* discusses whether the “Full Credit Bid Rule” bars attempts by such a lender to recover the lender’s loss from an insurance company.

In 2016, the Michigan Supreme Court directly addressed in *Bank of America, NA v. First American Title Ins. Co.* whether a full credit bid prevents a lender from recovering a loss under its Closing Protection Letter. The Court, first, held that the full credit bid rule does not bar contract claims against nonborrower third parties.[45](#co_footnote_I812b23b2d6ee11ea8f41e1f6f2a)

[T]he full credit bid rule is related to the anti-deficiency statute, and its purpose is merely to resolve the question of the value of the property for purposes of determining whether the mortgage debt was satisfied. It is not concerned with the relationship between the lender and third parties and was simply not intended to cut off all remedies a mortgagee might have against nonborrower third parties.[46](#co_footnote_I812b23b3d6ee11ea8f41e1f6f2a)

The Michigan Supreme Court’s holding was not based only on Michigan statute; for this general rule, the Court cited with approval two California cases.[47](#co_footnote_I812b23b4d6ee11ea8f41e1f6f2a) The Court then buttressed this holding with the language of the Michigan anti-deficiency statute.[48](#co_footnote_I812b4ac0d6ee11ea8f41e1f6f2a)

The Michigan Supreme Court also addressed Closing Protection Letters themselves:

Further, holding that Bank of America’s full credit bids meant that it suffered no damages whatsoever and thus could not recover under any theory would impinge on the parties’ ability to contract as they see fit and would nullify the protections for which Bank of America contracted.78 Through the contracts at issue, Bank of America sought to protect itself from the very activity that allegedly occurred in this case—fraud by those individuals involved in closing the mortgage. Bank of America’s ability to recover under the contracts is not limited by its bids on the properties; instead, as discussed later in this opinion, the parties agreed that Bank of America could recover for *any loss* resulting from Westminster’s failure to follow the closing instructions and its *actual losses* arising out of the fraud or dishonesty of Westminster in connection with the closings. Bank of America has presented evidence that it suffered actual losses when it sold the properties for much less than the amounts of the loans provided. We see no justification for limiting or nullifying Bank of America’s contractual rights by application of a rule designed to determine Bank of America’s rights in relation to the mortgagors.[49](#co_footnote_I812b4ac1d6ee11ea8f41e1f6f2a)

Conversely, the U.S. District Court for the Northern District of Illinois in 2010 held in *Freedom Mortgage Corp. v. Burnham Mortgage, Inc.* that the Full Credit Bid Rule bars future contract claims against title insurers as well as future tort claims, including for fraud or negligence.[50](#co_footnote_I812b4ac2d6ee11ea8f41e1f6f2a) “Because a mortgagee is entitled to one satisfaction of his debt and no more, the bidding in [full] of the debt to purchase the mortgaged property, thus cutting off other lower bidders, has always constituted a satisfaction of the debt … [A] full credit bid means that there is no deficiency in the property.”[51](#co_footnote_I812b4ac3d6ee11ea8f41e1f6f2a)

The U.S. District Court for the District of Arizona in 2013 in *Equity Income Partners, LP v. Chicago Title Insurance Co.* also held that the insured lender’s full credit bid precluded it from pursuing a claim under either its policy or Closing Protection Letter.[52](#co_footnote_I812b4ac4d6ee11ea8f41e1f6f2a) In comparison, in *Marshall & Ilsley Bank v. Wright,* the same court had ruled that the insured lender’s “full credit bid” did not preclude claims related to problems with forgery and invalidity of the mortgage lien, Therefore, that insured was able to sue under its Closing Protection Letter.[53](#co_footnote_I812b4ac5d6ee11ea8f41e1f6f2a) The reader is referred to [§ 6:19](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a19&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra* for a more complete analysis of these cases.

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| **Footnotes** | |
| [\*](#co_fnRef_I81268fd0d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I8127ef60d6ee11ea8f41e1f6f2aa78) | *See* [§§ 1:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a1&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [2](#co_fnRef_I8127ef62d6ee11ea8f41e1f6f2aa78) | [Heritage Pacific Financial, LLC v. First American Title Ins. Co., 2013 WL 4401040, \*5 (D. Md. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031305474&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d*.; [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 419 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_419&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_419), on reconsideration in non-relevant part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming [795 F. Supp. 2d 624, 629 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_629&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_629). |
| [3](#co_fnRef_I8127ef63d6ee11ea8f41e1f6f2aa78) | [Heritage Pacific Financial, LLC v. First American Title Ins. Co., 2013 WL 4401040, \*6 (D. Md. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031305474&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d* (holder of closing protection letter suffers actual loss from the agent’s malfeasance when foreclosure on the property is completed and the loan is left unpaid); [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 419 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_419&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_419), on reconsideration in non-relevant part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (lender was required to prove it had repurchased the mortgage loans that were part of the approved attorneys’ fraudulent scheme). |
| [4](#co_fnRef_I8127ef64d6ee11ea8f41e1f6f2aa78) | *See infra* [Appendix D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* closing protection letters quoted in [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), on reconsideration in non-relevant part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624, 626–627 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_626&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_626), affirmed by [2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I81281671d6ee11ea8f41e1f6f2aa78) | [Herget Nat. Bank of Pekin v. USLife Title Ins. Co. of New York, 809 F.2d 413 (7th Cir. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987005710&pubNum=0000350&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I81281672d6ee11ea8f41e1f6f2aa78) | [Herget Nat. Bank of Pekin v. USLife Title Ins. Co. of New York, 809 F.2d 413, 416 (7th Cir. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987005710&pubNum=0000350&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_416&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_416) (emphasis added). |
| [7](#co_fnRef_I81281673d6ee11ea8f41e1f6f2aa78) | [First Financial Savings & Loan Association v. Title Insurance Company of Minnesota, 557 F. Supp. 654, 662 (N.D. Ga. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983109380&pubNum=0000345&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_345_662&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_662) (emphasis added). Actually, this author would dispute the court’s holding in First Financial because the court ignored additional language in the insured closing letter which said the insurer was also liable for “direct loss or damage resulting to you from their failure to comply with your written closing instructions.” In that case, the agents had been told to issue certificates that the loans were closed after they were closed. The agents issued the certificates even though the loans had not been closed. The insurer should have been liable under the letter for the “direct loss or damage” that resulted to the addressee from the agents’ failure to comply with the addressee’s written closing instructions, even if the loss was not of “settlement funds.” |
| [8](#co_fnRef_I81281674d6ee11ea8f41e1f6f2aa78) | Nielsen, Title & Escrow Claims Guide, p. 446 (1996). *See* [American Title Ins. Co. v. Burke & Herbert Bank & Trust Co., 813 F. Supp. 423, 20 U.C.C. Rep. Serv. 2d 564 (E.D. Va. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993051441&pubNum=0000345&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [25 F.3d 1038 (4th Cir. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994118543&pubNum=0000506&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Pursuant to these letters, American Title was obligated to reimburse the payees for the losses arising from the nonpayment of the dishonored checks.”).  *See also* [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  In [*Sears Mortg. Corp. v. Rose*, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), we determined that a closing attorney who had been retained by the purchaser and designated by the title insurance company as its approved attorney to effectuate the purchase of insurance was a dual agent of both the buyer and the title insurer…. We held that responsibility for the attorney’s theft of the purchase moneys should be placed on the insurer because, as between both principals, the insurer exercised greater control over the attorney and was in a better position to have avoided the loss…. [I]n a transaction involving a … lender that has a closing-protection letter from the title insurer, the insurer becomes subrogated to the position of the lender on the payment for the loss. If a closing attorney steals funds that were to be used to satisfy a preexisting mortgage, the insurer seeks to purchase the preexisting mortgage by paying the amount due and taking an assignment of the mortgage. If the title company obtains an assignment, it subordinates the preexisting mortgage to the new one and provides first-mortgage status for the latter. However, it then forecloses on what has become a second mortgage. Commonwealth, in effect, would recoup its loss by moving against its own insured, the purchaser of the property, who paid for the title insurance. Sometimes, however, the holder of the preexisting mortgage will not agree to an assignment, perhaps out of concern for the loss that the buyer and/or seller would suffer if the title-insurance company forecloses on the property. In that case, Commonwealth would pay off the preexisting mortgage and would not recoup its loss….  We are satisfied that because Commonwealth is responsible for the attorney’s misappropriation, it must protect the purchaser against the loss. However, when the purchaser is paying for the property in full with his or her own funds, as in this case, there will be no new mortgage to which the existing mortgage can be subordinated. Hence, it is only fair that Commonwealth be required to pay off and cancel the existing mortgage. The trial court ordered Commonwealth to pay off the Sears mortgage and issue Kaiser an owner’s title-insurance policy free of the Sears mortgage encumbrance. It also denied Sears a judgment of foreclosure and ordered Commonwealth to pay Rose’s and Kaiser’s attorney’s fees. We agree with that disposition…. Although Sears had a statutory right to foreclose on the Rose mortgage …, the trial court instead ordered Commonwealth to reimburse Sears for the full amount due on the mortgage so that Kaiser could remain in his home…. [I]f Commonwealth had promptly satisfied its obligations under Kaiser’s title insurance policy, the Sears mortgage would not have remained unsatisfied. Kaiser should not be punished for the uncertain state of the law at the time Gillen stole the Sears payoff funds. Although Sears had the statutory right to foreclose on the defaulted mortgage, that remedy is designed, ultimately, only to satisfy the monetary obligation that underlies the mortgage…. That objective will be accomplished by Commonwealth’s satisfaction of the mortgage. |
| [9](#co_fnRef_I81283d80d6ee11ea8f41e1f6f2aa78) | *See* §§ [5:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a3&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a18&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [6:23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a23&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and [10:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a8&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [10:17](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a17&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) for title insurance policies’ insuring clauses, exclusions, and conditions defining and limiting a title insurer’s liability for insureds losses. |
| [10](#co_fnRef_I81286491d6ee11ea8f41e1f6f2aa78) | *See* [JPMorgan Chase Bank, N.A. v. First American Title Ins. Co., 750 F.3d 573, 88 Fed. R. Serv. 3d 648 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000506&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), as amended, (July 2, 2014) and cert. denied, [135 S. Ct. 2349, 192 L. Ed. 2d 143 (2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2035292363&pubNum=0000708&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [First American Title Ins. Co. v. Vision Mortg. Corp., Inc., 298 N.J. Super. 138, 689 A.2d 154 (App. Div. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997057364&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I81286492d6ee11ea8f41e1f6f2aa78) | [F.D.I.C. v. First American Title Ins. Co., 611 Fed. Appx. 522, 532 (11th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036163962&pubNum=0006538&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_6538_532&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_6538_532), cert. denied, [136 S. Ct. 1165, 194 L. Ed. 2d 177 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037566635&pubNum=0000708&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *quoted with approval by* [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*8 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I81286493d6ee11ea8f41e1f6f2aa78) | [F.D.I.C. v. First American Title Ins. Co., 611 Fed. Appx. 522, 533 (11th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036163962&pubNum=0006538&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_6538_533&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_6538_533), cert. denied, [136 S. Ct. 1165, 194 L. Ed. 2d 177 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2037566635&pubNum=0000708&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *quoted with approval by* [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*8 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* [Aurora Loan Services, LLC v. Hirsch, 170 Conn. App. 439, 154 A.3d 1009 (2017)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2040838237&pubNum=0007691&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (awarding the amount of principal and interest due on the loans minus the appraised value of the property as of the date the lender was able to foreclose). |
| [13](#co_fnRef_I81286494d6ee11ea8f41e1f6f2aa78) | [Regions Bank v. Commonwealth Land Title Insurance Company, 2016 WL 3753146, \*9 (N.D. Ala. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039361586&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I81288ba0d6ee11ea8f41e1f6f2aa78) | [First American Title Ins. Co. v. Vision Mortg. Corp., Inc., 298 N.J. Super. 138, 689 A.2d 154 (App. Div. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997057364&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I81288ba1d6ee11ea8f41e1f6f2aa78) | “Here Vision did not get what it bargained for. While it is true that Vision had first lien status, despite Levenson’s fraud, and that the validity of its mortgage was not affected by that fraud, this was a sham transaction from the outset.” [First American Title Ins. Co. v. Vision Mortg. Corp., Inc., 298 N.J. Super. 138, 689 A.2d 154, 157 (App. Div. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997057364&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_157&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_157). *See also* [M & I Marshall & Ilsley Bank v. Wright, 2011 WL 2713973, \*2, 4 (D. Ariz. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025655941&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Walsh Securities, Inc. v. Cristo Property Management, Ltd., 858 F. Supp. 2d 402, 419 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027607788&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_419&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_419), on reconsideration in part, [2012 WL 3629045 (D.N.J. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028474060&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I81288ba2d6ee11ea8f41e1f6f2aa78) | [First American Title Ins. Co. v. Vision Mortg. Corp., Inc., 298 N.J. Super. 138, 689 A.2d 154, 157 (App. Div. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997057364&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_157&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_157). |
| [17](#co_fnRef_I81288ba3d6ee11ea8f41e1f6f2aa78) | [First American Title Ins. Co. v. Vision Mortg. Corp., Inc., 298 N.J. Super. 138, 689 A.2d 154, 156 (App. Div. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997057364&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_156&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_156). *Accord* [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming [795 F. Supp. 2d 624 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I81288ba4d6ee11ea8f41e1f6f2aa78) | [Fifth Third Mortg. Co. v. Kaufman, 2013 WL 474506, \*3 (N.D. Ill. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029819314&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *In accord* [M & I Marshall & Ilsley Bank v. Wright, 2011 WL 2713973, \*2, 4 (D. Ariz. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025655941&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Aurora Loan Services, LLC v. Hirsch, 170 Conn. App. 439, 154 A.3d 1009 (2017)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2040838237&pubNum=0007691&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (awarding the amount of principal and interest due on the loans minus the appraised value of the property as of the date the lender was able to foreclose). For case law construing the meaning of “loss” under loan title insurance policies, *see supra* §§ [5:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a3&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [6:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a18&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [6:23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a23&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and Chapter 10. |
| [19](#co_fnRef_I8128b2b3d6ee11ea8f41e1f6f2aa78) | [Fifth Third Mortg. Co. v. Kaufman, 2013 WL 474506, \*3 (N.D. Ill. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2029819314&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *In accord* [M & I Marshall & Ilsley Bank v. Wright, 2011 WL 2713973, \*2, 4 (D. Ariz. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025655941&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I8128b2b4d6ee11ea8f41e1f6f2aa78) | *See infra* letters reproduced at Appendix D to D2 and discussion *supra* [§ 20:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a15&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [21](#co_fnRef_I8128d9c1d6ee11ea8f41e1f6f2aa78) | [American Title Ins. Co. v. Variable Annuity Life Ins. Co., 1996 WL 544431 (Tex. App. Houston 14th Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996218263&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Apr. 18, 1997) (nonpublished case). |
| [22](#co_fnRef_I8128d9c2d6ee11ea8f41e1f6f2aa78) | [American Title Ins. Co. v. Variable Annuity Life Ins. Co., 1996 WL 544431, \*5 (Tex. App. Houston 14th Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996218263&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Apr. 18, 1997). |
| [23](#co_fnRef_I8128d9c3d6ee11ea8f41e1f6f2aa78) | [American Title Ins. Co. v. Variable Annuity Life Ins. Co., 1996 WL 544431, \*9 (Tex. App. Houston 14th Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996218263&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Apr. 18, 1997):  By entering into the insured closing letter, VALIC sought to “insure” that it could close financing and refinancing transactions at a title company’s agent’s office without fear that its funds would be lost due to the “fraud or dishonestly” of the agent. In exchange for providing this assurance, ATIC sold additional title policies through its agent. Summit’s defalcation falls squarely within what was anticipated by the insured closing letter. As discussed below, ATIC’s failure to pay under the insured closing letter resulted in damages to VALIC of $322,655.54 plus interest and attorney’s fees incurred since 1986. The amount of damages from the breach of the insured closing letter is well in excess of the $353,193.48 paid by ATIC to VALIC under the title policy. Thus, VALIC sustained damages from ATIC’s breach of the insured closing letter. Furthermore, when VALIC settled with the Morian Estate and the Tenenbaums, both parties had pending claims against ATIC and/or VALIC for their damages resulting from Summit’s defalcation. Because ATIC refused to acknowledge any additional liability, under the insured closing letter or its policy, VALIC felt forced to “buy-its-peace” and avoid this exposure. The settlement terminated the foreclosure proceedings by the Morian Estate and avoided wrongful foreclosure proceedings, and the resulting potential actual and punitive damages. |
| [24](#co_fnRef_I8128d9c4d6ee11ea8f41e1f6f2aa78) | [American Title Ins. Co. v. Variable Annuity Life Ins. Co., 1996 WL 544431, \*13 (Tex. App. Houston 14th Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996218263&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Apr. 18, 1997). |
| [25](#co_fnRef_I8128d9c5d6ee11ea8f41e1f6f2aa78) | *See infra* Appendix [D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [26](#co_fnRef_I812900d2d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 2014 WL 1622193, \*8 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming [795 F. Supp. 2d 624, 632 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_632&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_632). |
| [27](#co_fnRef_I812900d3d6ee11ea8f41e1f6f2aa78) | [Heritage Pacific Financial, LLC v. First American Title Ins. Co., 2013 WL 4401040, \*6-7 (D. Md. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031305474&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *Not Reported in F.Supp.2d*. (statutes of limitation for breach of contract and detrimental reliance did not begin to run until foreclosure on the property was completed and the loan was left unpaid). |
| [28](#co_fnRef_I812900d4d6ee11ea8f41e1f6f2aa78) | The amount of the policy and the settlement funds entrusted to the agent generally will be the same, since the amount of a lender’s policy usually is the funds the lender passes to the borrower’s seller via the escrow agent, and the amount of an owner’s policy usually is the purchase price, which generally will equal whatever funds the buyer passes to the seller via the escrow agent plus the loan amount. *See* discussion *supra* at [§ 4:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a2&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [29](#co_fnRef_I812a6060d6ee11ea8f41e1f6f2aa78) | *See infra* Appendix [D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [30](#co_fnRef_I812a6063d6ee11ea8f41e1f6f2aa78) | *See* ALTA Closing Protection Letter—Single Transaction (12-01-2015) at Appendix D5 *infra*. |
| [31](#co_fnRef_I812a8771d6ee11ea8f41e1f6f2aa78) | *See* ALTA Commitment *infra* at Appendix A & A1, and discussion *supra* [§ 5:29](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a29&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [32](#co_fnRef_I812a8773d6ee11ea8f41e1f6f2aa78) | *See, generally,* [American Title Ins. Co. v. Variable Annuity Life Ins. Co., 1996 WL 544431 (Tex. App. Houston 14th Dist. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996218263&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Apr. 18, 1997) (unpublished opinion); [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [33](#co_fnRef_I812a8774d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* [Aurora Loan Services, LLC v. Hirsch, 170 Conn. App. 439, 154 A.3d 1009 (2017)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2040838237&pubNum=0007691&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [34](#co_fnRef_I812a8775d6ee11ea8f41e1f6f2aa78) | [Bancorp Bank v. Lawyers Title Ins. Corp., 2014 WL 3325861, \*5 (E.D. Pa. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033796857&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 288 Ga. App. 642, 649, 655 S.E.2d 269 (2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014214810&pubNum=0000711&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Metmor Financial, Inc. v. Commonwealth Land Title Ins. Co., 645 So. 2d 295, 297 (Ala. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993165211&pubNum=0000735&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_735_297&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_297). |
| [35](#co_fnRef_I812aae80d6ee11ea8f41e1f6f2aa78) | [Aurora Loan Services, LLC v. Hirsch, 170 Conn. App. 439, 455-456, 154 A.3d 1009, 1018-1019 (2017)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2040838237&pubNum=0007691&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_7691_1018&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_7691_1018):  The plaintiff’s claim is not for damages based on fraud, rather it is for damages based on breach of contract. The court found that the plaintiff was entitled to recovery of costs incurred in the two foreclosure actions because Hirsch had acted fraudulently and dishonestly, and thus the “fraud or dishonesty” clause in the letters of protection had been satisfied. But it was not the defendant who had acted fraudulently; rather, another party’s conduct, that of Hirsch, only triggered the contractual duty on the part of the defendant to reimburse the plaintiff. The court awarded as damages the “actual cost” of the fraud, but not the fees incurred in recovering the costs. The American rule, then, bars the plaintiff from recovering attorney’s fees, even though the possibility of fraud on the part of third parties is contemplated. The letters of protection do not provide for the recovery of attorney’s fees and do not create an exception to the rule. |
| [36](#co_fnRef_I812aae81d6ee11ea8f41e1f6f2aa78) | ALTA Closing Protection Letters 2008 & 2014, reproduced at [Appendix D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* Appendix [D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [37](#co_fnRef_I812aae85d6ee11ea8f41e1f6f2aa78) | *See infra* Appendix [D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [38](#co_fnRef_I812ad595d6ee11ea8f41e1f6f2aa78) | *See* [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624, 633 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_633&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_633) (though FDIC’s selling the loan prevented the title insurer from being able to foreclose it and pursue a deficiency judgment against the borrower, the title insurer’s ability to sue the title agent and borrower for fraud was not impaired), affirmed by [2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lawyers Title Ins. Corp. v. Frontier Title Co., 1989 WL 44186 (N.D. Ill. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989066947&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [39](#co_fnRef_I812afca0d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354, 634 A.2d 74, 88 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_88&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_88):  Security reimbursed SMA for the loss by paying off the existing mortgage on the property. It then became, under the terms of the closing-protection letter, “subrogated to all rights and remedies which [SMA] would have had against [Hart].” Security argues that on payment of the loss and its subrogation to SMA’s “rights and remedies,” it became entitled to recoup its loss from Hart because SMA would have had the identical right of recovery. We are satisfied that Security was liable to SMA for the loss attributable to the attorney’s theft and that Security should not be able to pass that loss back to Hart. Two reasons support that result. Security owed Hart an independent obligation, arising out of its duty as a title insurer, to indemnify Hart as its putative insured for the loss incurred through Witkowski’s theft. Second, although Security, as a subrogee, succeeded to the rights of SMA against Hart, its claim against Hart was no stronger than SMA’s claim; and, under the circumstances, SMA did not have the right to recover from Hart the loss attributable to the closing attorney’s embezzlement. |
| [40](#co_fnRef_I812afca1d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354, 634 A.2d 74, 88 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_88&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_88). |
| [41](#co_fnRef_I812afca2d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354, 634 A.2d 74, 88 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_88&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_88). |
| [42](#co_fnRef_I812afca5d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354, 634 A.2d 74, 88 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_88&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_88). *Accord* [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Clients’ Security Fund is the companion case to Sears. In Clients’ Security Fund, the insurer claimed that it was entitled to recoup the loss paid to the lender from the purchaser. The court stated two reasons why the insurer could not recover from the purchaser: (i) the purchaser was a putative insured, and thus, the insurer had an independent obligation to the purchaser to indemnify the purchaser for losses occurring from the theft; and (ii) the insurer’s subrogation rights are no greater than the rights of the lender to recover from the purchaser, and in this instance, the lender would not be entitled to recover for the theft. [634 A.2d at 96](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_96&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_96). Therefore, as between the lender and the purchaser, the lender should bear the loss of the attorney’s theft and the insurer should bear the loss as between the insurer, lender and purchaser. [634 A.2d at 98](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_98&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_98). |
| [43](#co_fnRef_I812afca6d6ee11ea8f41e1f6f2aa78) | [JP Morgan Chase Bank, N.A. v. First American Title Ins. Co., 795 F. Supp. 2d 624, 633 (E.D. Mich. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025509092&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_633&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_633), affirmed by [2014 WL 1622193 (6th Cir. 2014)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2033254513&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [44](#co_fnRef_I812b23b0d6ee11ea8f41e1f6f2aa78) | *See infra* Appendices for ALTA 1992 Loan Policies Conditions 2(c)(ii), 7(b) & 9(c) and 2006 Loan Policy, Conditions & Stipulations 2., 8(c) & 10(b). |
| [45](#co_fnRef_I812b23b2d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *In accord* [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 892 N.W.2d 467 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [46](#co_fnRef_I812b23b3d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *In accord* [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 892 N.W.2d 467 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [47](#co_fnRef_I812b23b4d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), *citing with agreement* [Kolodge v. Boyd, 88 Cal. App. 4th 349, 105 Cal. Rptr. 2d 749 (1st Dist. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001288419&pubNum=0003484&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Alliance Mortgage Co. v. Rothwell, 10 Cal. 4th 1226, 44 Cal. Rptr. 2d 352, 900 P.2d 601 (1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995178607&pubNum=0000661&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [48](#co_fnRef_I812b4ac0d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [49](#co_fnRef_I812b4ac1d6ee11ea8f41e1f6f2aa78) | [Bank of America, NA v. First American Title Ins. Co., 499 Mich. 74, 878 N.W.2d 816 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038661312&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *In accord* [Bank of America, NA v. Fidelity Nat. Title Ins. Co., 316 Mich. App. 480, 892 N.W.2d 467 (2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039222705&pubNum=0000595&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [50](#co_fnRef_I812b4ac2d6ee11ea8f41e1f6f2aa78) | [Freedom Mortg. Corp. v. Burnham Mortg., Inc., 720 F. Supp. 2d 978, 1008 (N.D. Ill. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022319524&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_1008&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1008). |
| [51](#co_fnRef_I812b4ac3d6ee11ea8f41e1f6f2aa78) | *See* discussion in [Freedom Mortg. Corp. v. Burnham Mortg., Inc., 720 F. Supp. 2d 978, 1007 (N.D. Ill. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022319524&pubNum=0004637&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_1007&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1007) of courts applying the FCB Rule to bar even fraud or negligence claims if the lender was aware of the facts before tendering the bid. |
| [52](#co_fnRef_I812b4ac4d6ee11ea8f41e1f6f2aa78) | [Equity Income Partners LP v. Chicago Title Ins. Co., 2013 WL 6498144, \*9 (D. Ariz. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2032274899&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [53](#co_fnRef_I812b4ac5d6ee11ea8f41e1f6f2aa78) | [M & I Marshall & Ilsley Bank v. Wright, 2011 WL 2713973, \*4 (D. Ariz. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025655941&pubNum=0000999&originatingDoc=I26190991355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:21 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I81560440d6ee11ea8f41e1f6f2a)**

§ 20:21. Title insurance underwriter’s liability for agents’ escrows and closings—Underwriter’s liability for agents’ acts absent closing protection letter

As the preceding subsections discuss, in a closing protection letter the title insurance underwriter contractually assumes liability for its agent’s fraud, dishonesty, failure to follow escrow instructions, and similar acts. The closing protection letter also has been held to be evidence of the agent’s apparent authority to act for the title insurer in closing the real estate transaction.[1](#co_footnote_I81560441d6ee11ea8f41e1f6f2a) When the title insurance underwriter has not given the insured a closing protection letter, whether the underwriter will be liable for the title insurance agent’s actions as closing or escrow agent in a transaction will depend on the jurisdiction and on the facts of the individual case.[2](#co_footnote_I81562b50d6ee11ea8f41e1f6f2a) In *Stout Street Funding LLC v. Johnson*, the court rejected the argument that a title insurance underwriter can never be liable for an agent’s defalcations at closing if no closing protection letter was issued.[3](#co_footnote_I81562b51d6ee11ea8f41e1f6f2a) The court ruled:

A closing protection letter is ordinarily, but not exclusively, the means by which underwriter liability may be imposed. Courts also may inquire into the scope of the principal-agent relationship to determine whether the agent acted with actual or apparent authority to close the transaction on behalf of the principal. [*Nat’l Mortg. Warehouse, LLC v. Bankers First Mortg. Co.*, 190 F.Supp.2d 774, 779 (D.Md.2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_779&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_779) (“[L]ike other courts called upon to determine the authority of an issuing agent where no valid closing protection letter exists, the court will examine the Agency Agreement between Security Title and Title Express to define the scope of Trikeriotis’s authority.”); [*Bergin Fin.*, 397 F. App’x at 125, 127](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_6538_125&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_6538_125) (engaging in apparent agency analysis after finding no closing protection letter); [*Proctor*, 579 F.Supp.2d at 738 n. 23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017183448&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_738&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_738) (noting that absent applicable closing protection letter, court could find liability if the agent was acting under apparent authority from the principal); [*Resolution Trust*, 901 F.Supp. at 1124](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995210937&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_345_1124&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1124). The issuance of a closing protection letter demonstrates the need for additional protection for the lender because of the general absence of agency liability. [*Proctor*, 579 F.Supp.2d at 738](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017183448&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_738&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_738). If, however, there is evidence that the agent’s acts at closing were intended to bind the principal, no letter is necessary to impute liability. Accordingly, we reject TRGC’s argument.[4](#co_footnote_I81562b52d6ee11ea8f41e1f6f2a)

A few state legislatures refuse to permit a title insurance underwriter to deny liability for defalcation of funds by its title insurance agent.[5](#co_footnote_I81565260d6ee11ea8f41e1f6f2a) Most states have no such statute.

Courts traditionally have applied the common law of agency to decide whether a title insurance underwriter is liable for a title insurance agent’s errors or dishonesty in escrowing funds and closing real estate transactions.[6](#co_footnote_I81565261d6ee11ea8f41e1f6f2a) In general, the title insurance underwriter has liability for its agents’ wrongful conduct in closings if the agent was acting within the course and scope of its actual or apparent authority as the title insurance underwriter’s agent.[7](#co_footnote_I81565262d6ee11ea8f41e1f6f2a) Several factors are important in determining whether the title insurance agent will be deemed to have had actual or apparent authority to act as the title insurance underwriter’s agent in performing escrow and closing services.[8](#co_footnote_I81565263d6ee11ea8f41e1f6f2a) The U.S. District Court for the Eastern District of Pennsylvania described express actual authority, implied actual authority, and apparent authority as follows:

Actual authority may be express or implied. Express actual authority is that which has been expressly granted to an agent by his principal. Implied actual authority is that which is necessary, proper, and usual in the exercise of the agent’s express authority. Apparent authority is “the power to bind the principal where the principal has not actually granted authority but which he leads persons with whom his agent deals to believe that he has granted.”[9](#co_footnote_I81567970d6ee11ea8f41e1f6f2a)

The Kansas Supreme Court similarly compared a title insurance agent’s actual authority, apparent authority, and implied actual authority as long ago as 1976:

The liability of the principal for the acts and contracts of his agent is not limited to such acts and contracts of the agent as are expressly authorized, necessarily implied from express authority, or otherwise actually conferred by implication from the acts and conduct of the principal. All such acts and contracts of the agent as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, are also binding upon the principal. Apparent authority, or ostensible authority, as it is also called, is that which, though not actually granted, the principal knowingly permits the agent to exercise, or which he holds him out as possessing. Accordingly, as defined by the American Law Institute, an apparent agent is one who, with or without authority, reason ably appears to third persons to be authorized to act as the agent of another.[10](#co_footnote_I81567971d6ee11ea8f41e1f6f2a)

One factor considered when the title insurance agent is an attorney is designation by the title insurance underwriter as an “approved attorney.” Many courts hold that when a party uses a title insurer’s “approved attorney” for closing and title insurance, the attorney is the insurer’s agent for those activities and the insurer is liable for the attorney’s malfeasance.[11](#co_footnote_I81567972d6ee11ea8f41e1f6f2a)

In one New York case, although no separate closing protection or approved attorney “letter” had been issued to the insured, the title insurance underwriter was held liable for the fraud of an attorney it had identified as an “approved attorney.” The court found that the attorney was an authorized title insurance agent of the title insurer and was acting within the scope of his authority when he submitted a false title report.[12](#co_footnote_I8157d902d6ee11ea8f41e1f6f2a) The New Jersey Supreme Court also has held that, although the closing attorney had an attorney-client relationship with the purchaser, his designation as an “approved attorney” also indicated that he was the title insurer’s agent for purposes of applying purchase money to satisfy existing mortgages, securing clear title for the purchaser, and obtaining a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) insuring the purchaser’s interest.[13](#co_footnote_I8157d903d6ee11ea8f41e1f6f2a)

As stated above, a closing protection letter similarly has been treated as, not only a contract between the underwriter and addressee, but also an indication that the agent’s escrow and closing activities are within the scope of its authority from the title insurance underwriter.[14](#co_footnote_I8157d904d6ee11ea8f41e1f6f2a) Thus, an underwriter has been held liable for the agent’s actions under common-law agency principals even though the underwriter’s promise to indemnify under the particular closing protection letter expressly expired one year after the date of the closing.[15](#co_footnote_I81580012d6ee11ea8f41e1f6f2a) The closing protection letter’s terms, though unenforceable in contract, were evidence that the underwriter authorized the agent to perform closings in order to sell the underwriter’s title insurance policies.[16](#co_footnote_I81580013d6ee11ea8f41e1f6f2a)

Another factor considered is the agency agreement between the underwriter and the title insurance agent.[17](#co_footnote_I81580014d6ee11ea8f41e1f6f2a) Most agency contracts expressly appoint the agent as the underwriter’s representative to originate and solicit applications for title insurance, examine titles for title insurance, and prepare and issue title insurance commitments and policies. Agency agreements usually will state whether or not the agent is authorized to endorse over or waive exceptions in title insurance commitments and policies.[18](#co_footnote_I81582720d6ee11ea8f41e1f6f2a) Some contracts also may expressly “appoint” the agent to conduct closings; others may “permit” the agent to conduct closings, receive funds, and disburse them in closing real estate transactions. The agency agreement also expressly describes acts that are outside the agent’s authority, often forbidding the agent to, without the underwriter’s prior approval, change printed portions of title insurance commitments, policies and endorsements, insure extra-hazardous risks, or issue policies in excess of a set amount.[19](#co_footnote_I81582721d6ee11ea8f41e1f6f2a) Some agency agreements give only “policy-issuing agent” status or otherwise expressly deny that the agent acts for the underwriter in closing transactions or handling escrows.

The particular language the agency agreement employs may be important in determining whether the underwriter will be responsible for the agent’s acts in providing escrow and closing services.[20](#co_footnote_I81582724d6ee11ea8f41e1f6f2a) In several cases, where no other facts implied authority from the underwriter, the lack of inclusion of escrow and closing services within the agency agreement convinced courts that title insurance underwriters were not liable for their local agents’ acts when conducting escrows or closings.[21](#co_footnote_I81582725d6ee11ea8f41e1f6f2a) Conversely, courts will impose liability on the underwriter for the agent’s acts that the court finds lie within the scope of their agency agreement.[22](#co_footnote_I81584e30d6ee11ea8f41e1f6f2a)

General law interpreting contracts states that ambiguity in the agency agreement should be construed against the underwriter, who drafted it. An agency agreement often will expressly deny any authority of the agent to provide escrow or closing services on the underwriter’s behalf and any liability of the underwriter for the agent’s actions as escrowee. Yet, in the same agreement the underwriter goes on to assert a limited control over the agent’s escrow and closing business— e.g., requiring the agent to separate escrow accounts from operating accounts, to disburse closing funds only for the purposes for which they were entrusted, to submit escrow and closing files for the underwriter to audit, et cetera. Does this language suggest that the agency agreement actually embraces the title insurance agent’s escrow activities within the scope of the agent’s authority from the underwriter? Agency agreements sometimes fall into this ambiguous category, in part, because underwriters have become aware that their agency agreements may be offered in court as evidence of the underwriter’s liability as principal for the agent’s actions. Underwriters, therefore, try to draft them to avoid liability at common law for the agent’s escrow and closing services, but, simultaneously, to give the underwriter legal grounds for recovering from the agent if the underwriter is forced to pay for an agent’s escrow and closing errors or dishonesty either pursuant to common-law theories or a closing protection letter.[23](#co_footnote_I81584e31d6ee11ea8f41e1f6f2a)

Courts may look to an underwriter and agent’s course of conduct to help interpret terms of their agency agreement or to determine whether they subsequently modified their agency agreement. The case of *Ticor Title Insurance Co. v. National Abstract Agency, Inc.*, involved, not a claim by a purchaser or lender against an underwriter for losses caused by an agent, but, instead, an underwriter’s suit to recover from an agent amounts the underwriter had paid on closing protection letters due to the agent’s default.[24](#co_footnote_I81584e32d6ee11ea8f41e1f6f2a) The court found that, even if the paragraph in the agency agreement expressly limiting the agent’s authority to conduct closings on behalf of Ticor “somehow precluded recovery under a breach of fiduciary duty theory, clear and convincing evidence was presented by [Ticor’s Agency Manager] that the parties had modified this limitation through their course of conduct…. Clear and convincing evidence was presented by [Ticor’s Agency Manager] establishing that because closings were such an integral part of [the agent’s] business, [the agent] necessarily conducted closings within the scope of its agency relationship with Ticor.”[25](#co_footnote_I81584e33d6ee11ea8f41e1f6f2a)

Of course, interpreting the language of the agency agreement for evidence of the agent’s authority will not be necessary if a closing protection letter is available because in it the underwriter expressly agrees to indemnify for the agent’s errors and negligence in escrows and closings. However, when a closing protection letter is not available, counsel for potential insureds may find it prudent to request a copy of the agent’s agency or [**underwriting agreement**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a12abef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) with the title insurance underwriter.

A title insurance underwriter’s terminating its agency contract may end the agent’s actual authority to act as a closing agent for that underwriter, especially where the underwriter also obtains an injunction barring the agent from engaging in any future business on behalf of that underwriter.[26](#co_footnote_I81587540d6ee11ea8f41e1f6f2a) Terminating the agency agreement does not necessarily terminate the agent’s apparent authority, however.[27](#co_footnote_I81587541d6ee11ea8f41e1f6f2a)

Once apparent authority has been created, it does not terminate until the third person has reason to know that the principal has revoked the authority, or that the agent has renounced it, or that such time has elapsed or such events have happened after the authorization as to require the reasonable inference that the agent’s authority has terminated.[28](#co_footnote_I81587542d6ee11ea8f41e1f6f2a)

Besides the agency agreement, an additional factor that has suggested apparent or implied authority from the underwriter is the agent’s being permitted to use the underwriter’s name on its letterhead, title policies, and settlement statements.[29](#co_footnote_I81587543d6ee11ea8f41e1f6f2a) An underwriter’s supplying an attorney-agent with blank forms bearing the underwriter’s name has been a factor influencing courts to find that attorneys were authorized agents of title underwriters and acting within the scope of their authority when conducting escrows and closings.[30](#co_footnote_I81587544d6ee11ea8f41e1f6f2a)

Other factors considered have been whether the underwriter exercised control over the agent’s escrow or closing activities and the underwriter’s awareness of the risk and foreseeability of the loss.[31](#co_footnote_I81589c50d6ee11ea8f41e1f6f2a) Courts also consider whether the underwriter put the agent in a position to cause third parties harm.[32](#co_footnote_I81589c51d6ee11ea8f41e1f6f2a) The Tenth Circuit Court of Appeals considered this latter factor in *Richards v. Attorneys’ Title Guaranty Fund, Inc.*[33](#co_footnote_I81589c52d6ee11ea8f41e1f6f2a) In *Richards*, the court found that the president of an escrow service was the agent of a title insurance underwriter because the insurer had authorized the escrow service to perform the closing. The title insurer that had placed the agent in a position to interact with the party who was harmed, therefore, was liable for his theft.[34](#co_footnote_I81589c53d6ee11ea8f41e1f6f2a) The Tenth Circuit Court reasoned that § 261 of the Restatement (Second) of Agency applied:

A principal who puts a servant or other agent in a position which enables the agent, while apparently acting within his authority, to commit a fraud upon third persons is subject to liability to such persons for the fraud.[35](#co_footnote_I81589c54d6ee11ea8f41e1f6f2a)

The Tenth Circuit Court reasoned that a principal’s liability under [§ 261](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0288873197&pubNum=0101579&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) “is based upon the principal placing the agent in the position to interact with the third party who is harmed.”[36](#co_footnote_I8158c360d6ee11ea8f41e1f6f2a) The jury had determined that the escrow company was acting within its authority as an agent for Attorneys’ Title when its president stole escrowed funds. Accordingly, Attorneys’ Title was liable to the plaintiff because Attorneys’ Title placed the escrow company in a position that enabled it to commit a fraud upon the plaintiff.[37](#co_footnote_I8158c361d6ee11ea8f41e1f6f2a)

As stated, no single factor considered above is alone determinative of whether the title insurance underwriter will be held liable for a title insurance agent or approved attorney’s dishonesty or failure to follow instructions in escrows and closings. The underwriter will be responsible when the preceding factors combine to give the insured a picture of a local agent either controlled or facilitated by a larger national insurance company.[38](#co_footnote_I8158c362d6ee11ea8f41e1f6f2a) An example appears in *Sears Mortgage Corporation v. Rose*.[39](#co_footnote_I8158c363d6ee11ea8f41e1f6f2a) There the New Jersey Supreme Court held the title insurer liable for the theft of funds by an attorney who the purchaser had retained to close his purchase of a condominium where such attorney was an approved attorney and agent of the title insurer.[40](#co_footnote_I8158ea70d6ee11ea8f41e1f6f2a) The court reviewed the principles of agency to determine if the closing attorney was acting as Commonwealth Title Insurance Company’s agent when he absconded with the purchaser’s money. “Implied authority may be inferred from the nature or extent of the function to be performed, the general course of conducting the business, or from particular circumstances in the case.”[41](#co_footnote_I8158ea71d6ee11ea8f41e1f6f2a) Thus, someone who is not an “actual agent” may still be an apparent agent based on manifestations of such authority by the principal.[42](#co_footnote_I8158ea72d6ee11ea8f41e1f6f2a) Of significance to the determination of apparent agency is whether a third party has relied on the agent’s apparent authority to act for its principal.[43](#co_footnote_I815a22f0d6ee11ea8f41e1f6f2a)

In determining whether the closing attorney was Commonwealth’s agent, the court found that, in North New Jersey closings, the purchaser’s attorney performs the same functions as the local title insurance agency does for closings in South New Jersey and other parts of the country.[44](#co_footnote_I815a22f1d6ee11ea8f41e1f6f2a) The court noted that title insurers identify the attorneys they permit to issue their title insurance policies in real estate transactions to the public as their “approved attorneys.”[45](#co_footnote_I815a4a00d6ee11ea8f41e1f6f2a) Furthermore, the title insurer directs all communication with respect to the purchaser through the attorney. The title insurer gives instructions directly to the purchaser’s attorney. The insurance commitment names the attorney as the “applicant.” In addition, if the purchaser’s attorney does not pay the premium, the insurance company does not notify the purchaser, it continues to send notification to the purchaser’s attorney.[46](#co_footnote_I815a4a01d6ee11ea8f41e1f6f2a) The court observed that all communication was between Commonwealth and the attorney. Additionally, the closing attorney received blank forms from Commonwealth for his use. In the commitment for insurance, Commonwealth directed the attorney to pay off and cancel the Sears mortgage. Commonwealth sent the commitment to the closing attorney and billed him directly for insurance premiums. The court determined that the purchaser is without choice and is forced by the insurance company to rely on the closing attorney to perform the functions serving the insurer.[47](#co_footnote_I815a4a02d6ee11ea8f41e1f6f2a) The court concluded that the attorney had apparent authority to act on Commonwealth’s behalf.

At the end of its analysis, the court discussed an additional factor that influenced its decision, i.e., who, out of all parties in the case, was in the best position to prevent the loss.[48](#co_footnote_I815a4a03d6ee11ea8f41e1f6f2a) Commonwealth’s awareness of the risk of attorney defalcation was evidenced by its practice of protecting institutional lenders through the issuance of closing protection letters. “By dealing solely with attorneys rather than with their clients, [Commonwealth] enabled the attorney to mislead or harm the purchaser. Commonwealth was in a position either to prevent or to protect against the loss suffered by Kaiser.”[49](#co_footnote_I815a4a04d6ee11ea8f41e1f6f2a) Whether or not this is expressly stated as a factor in the court’s opinion, courts frequently are influenced by which party was in the best position to prevent the loss.[50](#co_footnote_I815a4a05d6ee11ea8f41e1f6f2a) Where a sophisticated mortgagee has failed to follow internal policies in verifying documents its mortgage broker submits for funding, a court may consider it more reasonable to hold the mortgagee responsible for the loss than the title insurer.[51](#co_footnote_I815a4a06d6ee11ea8f41e1f6f2a)

A title insurance underwriter also may be found liable if it subsequently ratifies its agents’ acts, even though they were outside the scope of the agency at the time of performance.[52](#co_footnote_I815a7110d6ee11ea8f41e1f6f2a) Whether the acts in question and the title insurance underwriter’s resulting liability is couched in terms of “ratification,” “implied authority,” “apparent agency” or the like, courts tend to impose liability where the insurer is aware of the agent’s acts and in some form or fashion participates in, acknowledges, or gives the appearance of consent. For this reason, the Eighth Circuit Court held a title insurance underwriter liable for acts outside of its agency agreement when the insurer had knowledge of the local title company’s acts and seemed to acquiesce in such acts. In *Coldwell Banker Relocation Services v. TRW Title Insurance Co.*, TRW contracted with attorney John McCarty to issue title insurance policies. The agency agreement did not include escrow services.[53](#co_footnote_I815a7111d6ee11ea8f41e1f6f2a) The attorney’s theft of funds designated for a mortgage payoff prompted the lawsuit in that case.[54](#co_footnote_I815a7112d6ee11ea8f41e1f6f2a)

The Eighth Circuit Court based its decision on the title insurance underwriter’s continuing to employ the attorney as an agent to issue its policies, despite the insurer’s knowledge of particular actions by him. For example, the insurer knew that the attorney regularly performed escrow services and closings where the insurer’s policy was to be issued. The insurer also knew that he had the insurer’s logo on his flyer describing McCarty Title Services Company as a “title insurance and escrow agency.” The insurer also knew that another title insurance underwriter had discontinued his services because he failed to let such underwriter audit his escrow account. Furthermore, the insurer in this case had threatened to terminate the agency agreement with the attorney when he refused to let the insurer audit his escrow account, but the insurer failed to follow through on its threat. The insurer also sent a list to the attorney that forbade his closing particular types of transactions, one being the transaction at issue in the case. Finally, an officer of the insurer had indicated that the insurer would continue to indemnify against loss caused by this attorney. Looking at the totality of the facts, the Eighth Circuit Court concluded that the title insurance underwriter should be liable for the loss.[55](#co_footnote_I815a7113d6ee11ea8f41e1f6f2a)

Courts applying agency law theories have assessed punitive damages against title insurance underwriters for wrongful acts committed by their title insurance agents as escrow agents in the underlying real estate transaction. This result may be less likely in jurisdictions that apply the theory of agency set forth in the Restatement of Torts 2d. The Restatement holds a principal liable for punitive damages only if the principal authorized the doing and the manner of the wrongful act, the agent was employed and acting within the scope of its employment in a managerial capacity for the principal, or the principal ratified or approved the wrongful act.[56](#co_footnote_I815a7114d6ee11ea8f41e1f6f2a) Courts generally have not found that a title insurance agent acts in a managerial capacity for the underwriter.[57](#co_footnote_I815a7115d6ee11ea8f41e1f6f2a)

As shown above, even after the title insurance underwriter formally terminated the agency contract an “apparent agency” may continue based on the facts; but, this is not true for a cause of action for negligent hiring and supervision. A principal generally is not liable under a negligent supervision theory for torts committed by a former agent or employee after the formal contractual relationship ends. “While principals may still be vicariously liable for the acts of their agents after the principal-agent relationship terminates, …[t]his is not so for a negligent supervision claim. Once an employee or agent is terminated, the employer or principal is no longer capable of negligently selecting, training, retaining or supervising that individual; the end of the relationship must cut off liability.”[58](#co_footnote_I815a9820d6ee11ea8f41e1f6f2a)

When an agent is working for two principals who are aware of the dual agency, neither principal can be held liable by the other for the agent’s actions unless said principal participated in the agent’s wrong.[59](#co_footnote_I815a9821d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I81560440d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I81560441d6ee11ea8f41e1f6f2aa78) | [Mtge. Network, Inc. v. Ameribanc Mtge. Lending, L.L.C., 177 Ohio App. 3d 733, 2008-Ohio-4112, 895 N.E.2d 917, 920–21 (10th Dist. Franklin County 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016757297&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_578_920&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_578_920) (“[t]he relevant facts here demonstrate that Mortgage Network believed that [the title agent] was [the insurer’s] duly authorized agent, based on the closing protection letter [the insurer] issued to Mortgage Network…. [B]ecause [the insurer] failed to notify Mortgage Network that [the agent] was no longer its agent, [the insurer] is liable for the losses on subsequent closings involving Mortgage Network based on the doctrine of apparent authority.”); [Coldwell Banker Relocation Services, Inc. v. TRW Title Ins. Co., 74 F.3d 1243 (8th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996025237&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [RTC Mortg. Trust 1994 N-1 v. Fidelity Nat. Title Ins. Co., 58 F. Supp. 2d 503, 538 (D.N.J. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_538&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_538) (“it cannot be reasonably disputed that Title USA’s Closing Protection Letter conveyed to Home Federal that Eastern possessed ‘apparent authority’ to [close the transaction]”); [Lawyers Title Ins. Corp. v. Dearborn Title Corp., 904 F. Supp. 818, 30 U.C.C. Rep. Serv. 2d 289 (N.D. Ill. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995225998&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  In [RTC Mortg. Trust 1994 N-1 v. Fidelity Nat. Title Ins. Co., 58 F. Supp. 2d 503, 538 (D.N.J. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_538&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_538), the court held that the insurer voluntarily assumed a duty independent of its obligations in the title policy to assure the lender that its mortgage was a first priority lien. In RTC, the agent, Eastern, had knowledge of prior loans to the borrower secured by first and second mortgages because the agent had acted as the borrower’s counsel and as title agent in the prior transactions creating such mortgages. The title commitment issued to the lender did not show the second mortgage on the property. The agent had previously recorded the second mortgage and had a file covering the prior loan in its offices. [58 F. Supp. 2d at 510 to 514](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_510&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_510). Furthermore, the lender’s loan commitment letter required a legal opinion confirming its first lien status subject to the items listed in the [title commitment. 58 F. Supp. 2d at 511](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_511&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_511). The closing protection letter issued to the lender stated that its agent would close in accordance with the lender’s closing instructions as they related to the status of title and the enforceability and priority of the lien. However, the letter had expired. The court reasoned that the closing protection letter at least gave the appearance of apparent authority to close the transaction on the insurer’s behalf. [58 F. Supp. 2d at 539](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_539&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_539). With regard to the insurer’s liability the court concluded that the following acts evidenced the assumption of a voluntary duty on the insurer’s part: (i) knowledge obtained in searching title and preparing the commitment; (ii) the requirements of the lender assuring its first lien status; and (iii) the language in the closing protection letter. “Title USA engaged in affirmative conduct to assume a duty voluntarily on behalf of [lender], [citations omitted], namely, the duty to assure [lender] that its mortgage was ‘in fact’ in first lien priority.” [58 F. Supp. 2d at 538](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_538&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_538). The court pointed out that liability in the RTC case did not arise out of the closing protection letter because the letter had expired by its own terms. “Title USA’s duty to assure that [lender’s] mortgage was in fact in a first lien position arises out of [lender’s] written closing instructions, and the fact that Title USA represented to [lender] that Eastern was authorized to act as Title USA’s agent at closing, specifically as to the execution of [lender’s] written closing instructions.” [58 F. Supp. 2d at 539, 540](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_539&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_539). |
| [2](#co_fnRef_I81562b50d6ee11ea8f41e1f6f2aa78) | *See* [Stout Street Funding LLC v. Johnson, 2012 WL 1994800 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 783 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_783&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_783); [Resolution Trust Corp. v. American Title Ins. Co., 901 F. Supp. 1122 (M.D. La. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995210937&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Security Union Title Ins. Co. v. Citibank, Fla., 715 So. 2d 973 (Fla. 1st DCA 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998123072&pubNum=0000735&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Universal Bank v. Lawyers Title Ins. Corp., 62 Cal. App. 4th 1062, 73 Cal. Rptr. 2d 196 (2d Dist. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998081369&pubNum=0003484&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Bodell Const. Co. v. Stewart Title Guar. Co., 945 P.2d 119 (Utah Ct. App. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997175456&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Sommers v. Smith and Berman, P.A., 637 So. 2d 60 (Fla. 4th DCA 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994110625&pubNum=0000735&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cameron County Sav. Ass’n v. Stewart Title Guar. Co., 819 S.W.2d 600 (Tex. App. Corpus Christi 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991175436&pubNum=0000713&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Mar. 11, 1992).  *See generally* [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 267 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_267&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_267) (holding that a title insurer and its agent were liable for its agent’s improper disbursement of funds causing the purchasers to lose the entire amount paid toward the property). Guarantee was an agent for Chicago Title Insurance Company for the purpose of issuing policies and for “handling all written transactions in the furtherance of issuing a title insurance policy.” [553 P.2d at 259](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_259&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_259). Without otherwise discussing the relationship between them or the basis for the underwriter’s liability for its agent’s acts, the court found both the insurer and the agent liable for [Guarantee’s improper disbursement. 553 P.2d at 260](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_260&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_260). |
| [3](#co_fnRef_I81562b51d6ee11ea8f41e1f6f2aa78) | [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*4 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I81562b52d6ee11ea8f41e1f6f2aa78) | [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*4 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I81565260d6ee11ea8f41e1f6f2aa78) | Cal. Rev. Stat. § 12376, Ins. Code; [Fla. Stat. § 627.792](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.792&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code § 31A-23-308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23-308&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (providing that title insurance underwriter is liable to others dealing with its agents for funds deposited in escrows, closings, or settlements, regardless of the contractual relationship between the title insurance underwriter and the agent). *But see* [Bodell Const. Co. v. Stewart Title Guar. Co., 945 P.2d 119 (Utah Ct. App. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997175456&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (construing the statute strictly against the insured plaintiff). |
| [6](#co_fnRef_I81565261d6ee11ea8f41e1f6f2aa78) | [Bergin Financial, Inc. v. First American Title Co., 397 Fed. Appx. 119, 127 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_6538_127&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_6538_127) (engaging in apparent agency analysis after finding no closing protection letter); [Stout Street Funding LLC v. Johnson, 2012 WL 1994800 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 779 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_779&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_779) (engaging in apparent agency analysis after finding no closing protection letter); [Proctor v. Metropolitan Money Store Corp., 579 F. Supp. 2d 724, 738 n.23 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017183448&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_738&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_738) (noting that absent applicable closing protection letter, court could find liability if the agent was acting under apparent authority from the principal); [Commercial Standard Ins. Co. v. Moore, 237 Ark. 845, 376 S.W.2d 675 (1964)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1964127054&pubNum=0000713&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lane v. Security Title & Trust Co., 382 S.W.2d 326 (Tex. Civ. App. Dallas 1964)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1964128401&pubNum=0000713&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ refused n.r.e., (Jan. 27, 1965). |
| [7](#co_fnRef_I81565262d6ee11ea8f41e1f6f2aa78) | [James B. Nutter & Company v. Old Republic National Title Insurance Company, 2016 WL 5792686, \*4 (N.D. Ga. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039912546&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Generally, ‘the acts of an agent within the scope of his authority are binding on his principal…’”); [Bergin Financial, Inc. v. First American Title Co., 2008 WL 268823 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014995309&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [397 Fed. Appx. 119 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I81565263d6ee11ea8f41e1f6f2aa78) | *See* [Stout Street Funding LLC v. Johnson, 2012 WL 1994800 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 783 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_783&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_783) (“The party seeking to rely on the agency relationship must show: (1) that the principal has manifested his consent to the exercise of such authority or has knowingly permitted the agent to assume the exercise of such authority; (2) that the third person knew of the facts and, acting in good faith, had reason to believe, and did actually believe, that the agent possessed such authority; and (3) that the third person, relying on such appearance of authority, has changed his position and will be injured or suffer loss if the act done or transaction executed by the agent does not bind the principal.”); [Chicago Title Ins. Co. v. Alford, 3 S.W.3d 164 (Tex. App. Eastland 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999212351&pubNum=0004644&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding that title insurance underwriter was not liable for the closing agent’s failure to record the insured’s deed); [Cameron County Sav. Ass’n v. Stewart Title Guar. Co., 819 S.W.2d 600 (Tex. App. Corpus Christi 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991175436&pubNum=0000713&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ denied, (Mar. 11, 1992), the court held that no agency relationship existed and that the title insurer had made no promise to cover losses incurred as the result of improper actions of the party closing the loan. The court observed that the fact that a closing agent such as a lawyer or title company might wear “two hats,” in selling the title insurance and closing the sale, did not make the title insurance company liable for the mishandling of the real estate closing.  In [Gerrold v. Penn Title Ins. Co., 271 N.J. Super. 50, 637 A.2d 1293 (App. Div. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994068721&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), the court also found that no agency relationship existed and that there could be no liability. The court noted that had a closing protection letter been issued, it probably would have reached a different result. *See also* [Resolution Trust Corp. v. American Title Ins. Co., 901 F. Supp. 1122, 1124 (M.D. La. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995210937&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_345_1124&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1124) (“the policy did not insure against the improper disbursement of real estate closing funds, nor did it insure the honesty, fidelity, and competence of its agent. There is no evidence of any written guaranteed closing letters which would evidence a guarantee by [the title insurer] for the proper disbursement of the real estate closing proceeds”); [Sommers v. Smith and Berman, P.A., 637 So. 2d 60 (Fla. Dist. Ct. App. 4th Dist. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994110625&pubNum=0000735&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding that a lawyer’s agency to issue title insurance for the title company did not result in liability of the company where the complaint did not allege a defect in title or that the title company was the closing agent); [Bodell Const. Co. v. Stewart Title Guar. Co., 945 P.2d 119 (Utah Ct. App. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997175456&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (ruling that the title insurer, by giving its agent authority to issue title policies, did not also give the agent implied authority to act as the insurer’s agent while performing acts of escrow, settlement, and closing transactions); [Security Union Title Ins. Co. v. Citibank, Fla., 715 So. 2d 973 (Fla. Dist. Ct. App. 1st Dist. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998123072&pubNum=0000735&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the title insurer, which allowed an attorney to act as its agent to prepare title commitments and issue policies, conferred no actual or apparent authority in connection with, and was thus not vicariously liable to, the mortgage lender for the alleged fraud of the attorney as the closing agent for the borrower); [Universal Bank v. Lawyers Title Ins. Corp., 62 Cal. App. 4th 1062, 73 Cal. Rptr. 2d 196 (2d Dist. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998081369&pubNum=0003484&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding that the title insurer was not liable for alleged fraudulent acts of its agent in connection with an escrow closing where the unambiguous terms of the agency agreement specifically excluded escrow and closing activities, and the lender had not requested an available closing protection letter); [Glynn v. New Hampshire Ins. Co., 578 So. 2d 36 (Fla. Dist. Ct. App. 4th Dist. 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991075626&pubNum=0000735&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that an agent can be the agent of the insurance company for one purpose and the agent of the insured for other purposes). |
| [9](#co_fnRef_I81567970d6ee11ea8f41e1f6f2aa78) | [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*4 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citations omitted). |
| [10](#co_fnRef_I81567971d6ee11ea8f41e1f6f2aa78) | [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 268 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_268&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_268). Chicago Title had contended it was error for the trial court to overrule its motion for a directed verdict because there was no clear and convincing evidence as to the agency relationship between Chicago Title and Guarantee, and further that there was no showing that its alleged agent was acting within the scope of its agency at the times complained of by the buyers. [553 P.2d at 267](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_267&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_267). The court noted that the title report had both Chicago and Guarantee’s name on it. The application that Guarantee gave its customers for title insurance also had Chicago Title’s name on its heading. The court reasoned:  [The] evidence disclosed that from the time Guarantee took an order for a title insurance policy and filled in the application form it was acting as the agent of Chicago Title. When one calls the local agent of a title insurance company to order a title insurance policy, the agent fills out an application form and runs a title search on the property for the purpose of preparing a title report, and thereafter when the exceptions, if any, have been cleared the title policy is issued. All of these steps are preliminary to the purchase of a title policy. Guarantee was admittedly the authorized agent of Chicago Title to issue its title policies. There was no contrary evidence before the jury on the agency question. The jury could hardly have found that Guarantee was not acting as the agent of Chicago Title at the time it disbursed the Fords’ money. |
| [11](#co_fnRef_I81567972d6ee11ea8f41e1f6f2aa78) | *See, generally,* [Resolution Trust Corp. v. American Title Ins. Co., 901 F. Supp. 1122 (M.D. La. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995210937&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Universal Bank v. Lawyers Title Ins. Corp., 62 Cal. App. 4th 1062, 73 Cal. Rptr. 2d 196 (2d Dist. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998081369&pubNum=0003484&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  Involving one title insurance underwriter’s claim against another to recover settlement funds misappropriated by an agent, *see* [Fidelity Nat. Title Ins. Co. of Pa. v. Chicago Title Ins. Co., 64 F.3d 656 (4th Cir. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995166407&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [TRW Title Ins. Co. v. Security Union Title Ins. Co., 887 F. Supp. 1032 (N.D. Ill. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995119242&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [153 F.3d 822 (7th Cir. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998182902&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Security Title Guarantee Corp. of Baltimore v. United General Title Ins. Co., 935 F. Supp. 816 (E.D. La. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996081698&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [91 F.3d 137 (5th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996162596&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See also supra* §§ [2:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a3&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a4&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), explaining conflict-of-interest issues inherent in an approved attorney’s selling title insurance for an underwriter in a client’s real estate transaction. |
| [12](#co_fnRef_I8157d902d6ee11ea8f41e1f6f2aa78) | [Meyerson v. Lawyers Title Ins. Corp., 39 A.D.2d 190, 333 N.Y.S.2d 33 (1st Dep’t 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972120560&pubNum=0000602&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), order aff’d, [33 N.Y.2d 704, 349 N.Y.S.2d 675, 304 N.E.2d 371 (1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973280027&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  The court in [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 79–80 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_79&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_79), first examined the general principles for finding that one is acting in the capacity of agent for another and the role the approved attorney took in the transaction:  There need not be an agreement between parties specifying an agency relationship; rather, “the law will look at their conduct and not to their intent or their words as between themselves but to their factual relation…. Of particular importance is whether a third party has relied on the agent’s apparent authority to act for a principal…. Moreover, direct control of principal over agent is not absolutely necessary; a court must examine the totality of the circumstances to determine whether an agency relationship existed even though the principal did not have direct control over the agent.”. C.J.S., pages 599, 600 § 36  **…**  In contrast, in north Jersey, title-insurance carriers do not use their own employees or “title agents” to supervise real-estate-title closings. They rely, instead, on the attorney for the purchaser, whom they must approve, to perform the functions of the title agent. The buyer’s attorney in north Jersey acts as the representative of, and performs the functions for, the title insurer in the same way as does the title agent in south Jersey. All communication with title-insurance companies with respect to the purchaser are directed to the purchaser’s attorney. The buyer’s attorney will accept the deed and necessary title and closing documents from the seller. He or she will remove all exceptions to the title according to the title commitment. The buyer’s attorney disburses all moneys; he or she will withhold a portion of the purchase price to satisfy outstanding liens and, with respect to any existing mortgage, obtain the mortgage-payoff statement, transmit the appropriate funds to the mortgagee, and receive the cancelled mortgage for recording. The attorney will authorize the issuance of title insurance. |
| [13](#co_fnRef_I8157d903d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 79–80 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_79&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_79); [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I8157d904d6ee11ea8f41e1f6f2aa78) | [Mtge. Network, Inc. v. Ameribanc Mtge. Lending, L.L.C., 177 Ohio App. 3d 733, 2008-Ohio-4112, 895 N.E.2d 917, 920–21 (10th Dist. Franklin County 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016757297&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_578_920&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_578_920) (“[t]he relevant facts here demonstrate that Mortgage Network believed that [the title agent] was [the insurer’s] duly authorized agent, based on the closing protection letter [the insurer] issued to Mortgage Network…. [B]ecause [the insurer] failed to notify Mortgage Network that [the agent] was no longer its agent, [the insurer] is liable for the losses on subsequent closings involving Mortgage Network based on the doctrine of apparent authority.”); [RTC Mortg. Trust 1994 N-1 v. Fidelity Nat. Title Ins. Co., 58 F. Supp. 2d 503, 538–540 (D.N.J. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_538&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_538). *But see* [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 783 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_783&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_783). *But see* exclusion in 2011 and 2014 ALTA Closing Protection Letters (*infra* Appendix [D3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD3&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [D4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPD4&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) stating that the agent is only an agent for issuing policies and not for closing transactions. |
| [15](#co_fnRef_I81580012d6ee11ea8f41e1f6f2aa78) | [RTC Mortg. Trust 1994 N-1 v. Fidelity Nat. Title Ins. Co., 58 F. Supp. 2d 503, 538–540 (D.N.J. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999178577&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_538&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_538). *Contra* [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 783 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_783&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_783). |
| [16](#co_fnRef_I81580013d6ee11ea8f41e1f6f2aa78) | An underwriter’s issuing a closing protection letter covering a particular agent also has been held to create a fiduciary duty of that agent to handle closing funds in a way that will protect the underwriter. [Ticor Title Ins. Co. v. National Abstract Agency, Inc., 2008 WL 2157046 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016169233&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I81580014d6ee11ea8f41e1f6f2aa78) | *See e.g.*, [Stout Street Funding LLC v. Johnson, 2012 WL 1994800 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fidelity Nat. Title Ins. Co. v. Mussman, 930 N.E.2d 1160, 1164–1169 (Ind. Ct. App. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022532146&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_578_1164&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_578_1164), transfer denied, [950 N.E.2d 1198 (Ind. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025682305&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (summarizing cases). *See supra* [§ 2:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a5&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this book for additional discussion of agency agreements. |
| [18](#co_fnRef_I81582720d6ee11ea8f41e1f6f2aa78) | *See* [C.A.M. Affiliates, Inc. v. First American Title Ins. Co., 306 Ill. App. 3d 1015, 240 Ill. Dec. 91, 715 N.E.2d 778 (1st Dist. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999184817&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I81582721d6ee11ea8f41e1f6f2aa78) | *See* cases cited *supra* at §§ [2:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a2&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a5&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this book. |
| [20](#co_fnRef_I81582724d6ee11ea8f41e1f6f2aa78) | *See generally* [Bergin Financial, Inc. v. First American Title Co., 2008 WL 268823 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014995309&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [397 Fed. Appx. 119 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 783 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_783&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_783); [Resolution Trust Corp. v. American Title Ins. Co., 901 F. Supp. 1122 (M.D. La. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995210937&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Universal Bank v. Lawyers Title Ins. Corp., 62 Cal. App. 4th 1062, 73 Cal. Rptr. 2d 196 (2d Dist. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998081369&pubNum=0003484&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [C.A.M. Affiliates, Inc. v. First American Title Ins. Co., 306 Ill. App. 3d 1015, 240 Ill. Dec. 91, 715 N.E.2d 778 (1st Dist. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999184817&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the agency agreement did not authorize agent to conduct escrow activities on underwriter’s behalf, but that the insured’s loss resulted from agent’s failure to correctly waive an exception in the title insurance commitment, which was authorized). |
| [21](#co_fnRef_I81582725d6ee11ea8f41e1f6f2aa78) | [Bergin Financial, Inc. v. First American Title Co., 2008 WL 268823 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014995309&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [397 Fed. Appx. 119 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774, 783 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_783&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_783); [Universal Bank v. Lawyers Title Ins. Corp., 62 Cal. App. 4th 1062, 73 Cal. Rptr. 2d 196, 198 (2d Dist. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998081369&pubNum=0003484&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_3484_198&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_3484_198) (holding that an insurer was not liable for its agent’s breach of escrow instructions because the agent was not authorized to act as escrow or closing agent on the insurer’s behalf); [Security Union Title Ins. Co. v. Citibank, Fla., 715 So. 2d 973, 975 (Fla. Dist. Ct. App. 1st Dist. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998123072&pubNum=0000735&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_735_975&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_975)) (holding that an underwriter was not liable for the fraudulent acts of its agent where such acts were outside the scope of the agency and where the plaintiff received a written copy of the underwriter’s agency agreement with the agent); [Sommers v. Smith and Berman, P.A., 637 So. 2d 60, 62 (Fla. Dist. Ct. App. 4th Dist. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994110625&pubNum=0000735&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_735_62&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_735_62) (holding that a title insurer was not liable for its agent’s acts in conducting a closing where the purchasers failed to allege at trial that the agent’s acts were covered by the agency relationship with the insurer. “[T]he fact that a closing agent such as a lawyer or title company might wear ‘two hats’ in selling the title insurance and closing the sale does not make the title insurance company liable for the mishandling of the real estate closing.”); [Spring Garden 79U, Inc. v. Stewart Title Co., 874 S.W.2d 945, 950 (Tex. App. Houston 1st Dist. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994094937&pubNum=0000713&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_713_950&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_950) (holding that the insurer was not liable for an agent’s escrow acts as such acts were not within the scope of the agency agreement between the insurer and the agent); [Cameron County Sav. Ass’n v. Stewart Title Guar. Co., 819 S.W.2d 600, 604 (Tex. App. Corpus Christi 1991)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1991175436&pubNum=0000713&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_713_604&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_604), writ denied, (Mar. 11, 1992) (holding that manipulation of closing documents by an insurer’s agent does not make the insurer liable where the agent’s authority was limited to issuing title insurance policies); [Bodell Const. Co. v. Stewart Title Guar. Co., 945 P.2d 119, 124 (Utah Ct. App. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997175456&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_124&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_124) (holding that an insurer was not responsible for an agent’s escrow acts because the agency agreement between the agent and the insurer did not include escrow and closing). *Cf.* [TRW Title Ins. Co. v. Security Union Title Ins. Co., 153 F.3d 822, 829 (7th Cir. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998182902&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_506_829&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_829) (holding that an insurer was not liable to another insurer for its agent’s escrow activities where the other insurer failed to investigate the agent and where the other insurer relied on misrepresentations by the agent, thereby assuming the risk of any losses in escrow funds); [Fidelity Nat. Title Ins. Co. of Pa. v. Chicago Title Ins. Co., 64 F.3d 656 (4th Cir. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995166407&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that an insurer may be liable to another insurer for its agent’s escrow activities if such activities are within the scope of its agency agreement). |
| [22](#co_fnRef_I81584e30d6ee11ea8f41e1f6f2aa78) | [Fifth Third Mortg. Co. v. Chicago Title Ins. Co., 758 F. Supp. 2d 476, 483 (S.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2024221999&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_483&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_483); [C.A.M. Affiliates, Inc. v. First American Title Ins. Co., 306 Ill. App. 3d 1015, 240 Ill. Dec. 91, 715 N.E.2d 778 (1st Dist. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999184817&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Newman v. Great American Mortg. Investors, 1988 WL 903143 (La. Ct. App. 5th Cir. 1988) (holding that an agent’s escrow acts were within the scope of its agency agreement where the insurer acknowledged responsibility for its agents’ “handling of monies or documents relating to transactions in connection with the closings of real estate purchases and loans when writing a policy of title insurance”). *See also* [Zabrecky v. American Title Ins. Co., 1994 WL 416286 (E.D. Pa. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994167818&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (concluding that a insurer may be liable for the acts of a closing attorney depending on the role and functions undertaken by the attorney and whether such functions were authorized or directed by insurer). *Cf.* [American Title Ins. Co. v. East West Financial, 16 F.3d 449, 454–455 (1st Cir. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994046256&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_506_454&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_454) (holding that the title insurance policy included coverage for existing liens not set forth in the policy because the agent had authority under its agency agreement to issue policies without listing prior liens on the property when the agent had assurances that the insured lender would be providing the funds to pay off such liens); [Red Lobster Inns of America, Inc. v. Lawyers Title Ins. Corp., 492 F. Supp. 933, 941 (E.D. Ark. 1980)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1980119400&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_345_941&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_941), aff’d in part, rev’d in part on other grounds, [656 F.2d 381 (8th Cir. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981136111&pubNum=0000350&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the insurer was liable to the insured for the closing agent’s acts where a separate contract between the insurer and the insured contemplated the insurer acting as closing agent for purchases across the nation). |
| [23](#co_fnRef_I81584e31d6ee11ea8f41e1f6f2aa78) | *See, e.g.,* [Ticor Title Ins. Co. v. National Abstract Agency, Inc., 2008 WL 2157046 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016169233&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (involving an underwriter’s suit against an agent for reimbursement of what the underwriter had to pay on closing protection letters covering the agent). |
| [24](#co_fnRef_I81584e32d6ee11ea8f41e1f6f2aa78) | [Ticor Title Ins. Co. v. National Abstract Agency, Inc., 2008 WL 2157046, \*8 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016169233&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The agency agreement expressly stated that the agent was not an agent of Ticor for purposes of conducting closings and even denied authority for the agent to conduct closings and handle closing funds. Yet, the same agreement directed the agent to disburse closing funds only for the purposes for which they were entrusted. It also required that “Agent shall cooperate with Principal in the performance of audits of Agent’s escrow records, accounts and procedures,” and provided that the agent was liable to Ticor for damages resulting from any improper closings. |
| [25](#co_fnRef_I81584e33d6ee11ea8f41e1f6f2aa78) | [Ticor Title Ins. Co. v. National Abstract Agency, Inc., 2008 WL 2157046, \*8-9 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016169233&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding the agent liable on Ticor’s breach of fiduciary duty claim for the amount of Ticor’s exposure for closing funds that the agent had misappropriated).  Five months earlier, however, in a case where a mortgage lender sued a title insurance underwriter for a closing agent’s overvaluation of properties and failure to disclose back-to-back escrows in a series of “flip” transactions, the very same court looked only to the agency agreement’s verbiage to hold that the agent was not acting on the underwriter’s behalf when performing escrows and closings. The difference likely was not the agency agreement’s terms so much as it was that the court believed the agent served as the mortgage lender’s agent in providing information about the parties and property value for purposes of closing the loan transactions, more than as the title insurer’s agent. [Bergin Financial, Inc. v. First American Title Co., 2008 WL 268823 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014995309&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [397 Fed. Appx. 119 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  *See also* [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 267 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_267&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_267), where the court held that a title insurer and its agent both were liable for the agent’s improper disbursement of funds that caused the purchasers to lose the entire amount paid toward the property. According to the agency agreement, Guarantee was an agent for Chicago Title Insurance Company for the purpose of issuing policies and for “handling all written transactions in the furtherance of issuing a title insurance policy.” [553 P.2d at 259](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_259&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_259). Though the agency agreement was not described as expressly providing that Guarantee was Chicago Title’s agent for purposes of escrowing funds, the court found that Guarantee was the apparent agent of the underwriter for all purposes after the purchaser called Guarantee to order Chicago Title’s title insurance policy. Therefore, “the jury could hardly have found that Guarantee was not acting as the agent of Chicago Title at the time it disbursed the Fords’ money.” [553 P.2d at 260](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_260&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_260). |
| [26](#co_fnRef_I81587540d6ee11ea8f41e1f6f2aa78) | [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*4 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [27](#co_fnRef_I81587541d6ee11ea8f41e1f6f2aa78) | [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*5 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [28](#co_fnRef_I81587542d6ee11ea8f41e1f6f2aa78) | [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*5 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [Restatement Third, Agency § 3.11 (2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0288873526&pubNum=0134551&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Apparent authority ends when it is no longer reasonable for the third party with whom an agent deals to believe that the agent continues to act with actual authority.”). |
| [29](#co_fnRef_I81587543d6ee11ea8f41e1f6f2aa78) | [Bodell Const. Co. v. Stewart Title Guar. Co., 945 P.2d 119 (Utah Ct. App. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997175456&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  “[T]he authority of the agent [is not] ‘apparent’ merely because it looks so to the person with whom he deals. It is the principal who must cause third parties to believe that the agent is clothed with apparent authority…. It follows that one who deals exclusively with an agent has the responsibility to ascertain that agent’s authority despite the agent’s representations.” … First Title’s use of Stewart Title’s name did not cloak First Title with apparent authority to act as Stewart Title’s agent in escrow, settlement, or closing transactions…. Any appearance of authority to act as Stewart Title’s agent in escrow, closing, or settlement transactions came from First Title, not Stewart Title. Thus, the requirement that the principal (Stewart Title) must conduct itself in such a way to cause the third party (plaintiffs) to believe that the agent (First Title) has apparent authority to act on behalf of the principal has not been met. Additionally, if plaintiffs really believed that First Title was acting as Stewart Title’s agent for settlement, escrow, or closing transactions, then they were under an obligation to ascertain the scope of that agency.  Neither did First Title have implied authority to act as Stewart Title’s agent. “Implied authority is actual authority based upon the premise that whenever the performance of certain business is confided to an agent such authority carries with it by implication authority to do collateral acts which are the natural and ordinary incidents of the main act or business authorized.” “Implied authority … embraces authority to do those acts which are incidental to, or are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent.” Plaintiffs argue that transactions involving escrows, closings, and settlements are necessary to issuing title insurance because they always occur simultaneously, and therefore, First Title had the implied authority to act as Stewart Title’s agent while conducting these transactions. While it may very well be true that issuing title insurance typically occurs concurrently with escrow, closing, and settlement functions, this does not necessarily make them mutually inclusive, which is evidenced by the agency agreement between Stewart Title and First Title limiting the relationship to the execution and issuance of title policies. Based on the undisputed facts of this case, we conclude that the authority bestowed upon First Title by Stewart Title did not give First Title the implied authority to act as Stewart Title’s agent while performing the collateral acts of escrow, settlement, and closing transactions. Accordingly, because First Title had neither apparent nor implied authority to act as Stewart Title’s agent in transactions involving escrows, closings, or settlements, Stewart Title cannot be held liable for any misconduct on the part of First Title under Section 31A-23-305 or common law. (Citations omitted.)  *See, generally*, [Ford v. Guarantee Abstract & Title Co., Inc., 220 Kan. 244, 553 P.2d 254, 268 (1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1976133357&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_268&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_268) (noting that the title report had both Chicago and Guarantee’s name on it and the application that Guarantee gave its customers for title insurance had Chicago Title’s name on it). |
| [30](#co_fnRef_I81587544d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Meyerson v. Lawyers Title Ins. Corp., 39 A.D.2d 190, 333 N.Y.S.2d 33 (1st Dep’t 1972)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972120560&pubNum=0000602&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), order aff’d, [33 N.Y.2d 704, 349 N.Y.S.2d 675, 304 N.E.2d 371 (1973)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1973280027&pubNum=0000578&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [31](#co_fnRef_I81589c50d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 80 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_80&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_80):  Reliance … to the extent it supports an agency relationship in this context, need not be predicated on the title insurer’s express assurances that it will protect the buyer against losses occasioned by an attorney’s misconduct. Reliance may be imputed when the title insurer, in fact, does not deal with the attorney’s client directly and, instead, conducts business through the attorney who is acting on its behalf as well as the client’s. Thus, the purchaser, in effect, is without choice in the matter, and is required by the insurance company to rely on the attorney to perform the functions that serve the insurer.  **…**  The record also demonstrates sufficient indicia of Commonwealth’s control over Gillen to support an agency relationship. All communication was between Commonwealth and Gillen. Commonwealth gave Gillen its blank forms to use. In the title commitment, Commonwealth directed Gillen to pay off and cancel the Sears mortgage…. It sent him the title-insurance policy and billed him directly for insurance premiums. Gillen remitted payment on behalf of his client.  **…**  Other courts have considered awareness of the risk and the element of foreseeability of loss in their consideration of liability based on agency principles…. Commonwealth was aware of the risk of defalcation of closing funds by such attorneys. By dealing solely with attorneys rather than with their clients, it enabled the attorney to mislead or harm the purchaser. Commonwealth was in a position either to prevent or to protect against the loss suffered by Kaiser. Accordingly, we find that Commonwealth is liable for Gillen’s theft. |
| [32](#co_fnRef_I81589c51d6ee11ea8f41e1f6f2aa78) | [Meyerson, 333 N.Y.S.2d at 37](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1972120560&pubNum=0000602&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_602_37&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_602_37); [Richards v. Attorneys’ Title Guar. Fund, Inc., 866 F.2d 1570, 1572–1573 (10th Cir. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989024271&pubNum=0000350&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_1572&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1572); [Jacobs v. Chicago Title Ins. Co., 709 F.2d 3, 4 (4th Cir. 1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983127779&pubNum=0000350&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_4&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_4) (holding that an insurer and a lender were in a better position to bear the loss caused by a closing attorney’s theft of funds where the attorney represented all parties to the transaction and where the attorney was specifically approved to act as the insurer’s special counsel in the transaction); [First American Title Ins. Co. v. Vision Mortg. Corp., Inc., 298 N.J. Super. 138, 689 A.2d 154, 156 (App. Div. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997057364&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_156&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_156) (“the title company was in the best position to prevent the loss created by the fraud and defalcation of the Approved Attorney”). *See, generally,* [Who must bear loss resulting from defaults or peculations of escrow holder, 15 A.L.R.2d 870](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1951009144&pubNum=0000107&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [33](#co_fnRef_I81589c52d6ee11ea8f41e1f6f2aa78) | [Richards v. Attorneys’ Title Guar. Fund, Inc., 866 F.2d 1570, 1572–1573 (10th Cir. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989024271&pubNum=0000350&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_1572&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1572). |
| [34](#co_fnRef_I81589c53d6ee11ea8f41e1f6f2aa78) | In Richards, the plaintiff owned several “7–11” stores that he agreed to sell to Snyder. Attorneys’ Title agreed to issue title policies for the Colorado properties and act as closing agent for the transaction. The plaintiff asked Attorneys’ Title to hold the sale proceeds until all transaction documents were properly recorded. Because the manager of the Attorneys’ Title branch office was going to be out of town, an employee of Centennial Escrow Services, Inc., Walter, performed the closing. Walter refused to release the sales proceeds to the plaintiff until the transaction documents were recorded. Walter took the sales proceeds to Centennial’s office for deposit into an escrow account and made a receipt. Walter left the proceeds and the deposit receipt for Centennial’s president, Marshall, to deposit. Marshall absconded with the sales proceeds. [866 F.2d at 1570, 1571](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989024271&pubNum=0000350&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_1570&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1570). |
| [35](#co_fnRef_I81589c54d6ee11ea8f41e1f6f2aa78) | [Restatement (Second) of Agency § 261 (1958)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0288873197&pubNum=0101579&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [36](#co_fnRef_I8158c360d6ee11ea8f41e1f6f2aa78) | The court noted that the state’s courts had applied [§ 261](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0288873197&pubNum=0101579&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in principal-agency cases. Additionally, state courts had applied [§ 261](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0288873197&pubNum=0101579&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in situations involving thefts. [866 F.2d at 1573, 1574](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989024271&pubNum=0000350&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_1573&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1573). |
| [37](#co_fnRef_I8158c361d6ee11ea8f41e1f6f2aa78) | [Richards v. Attorneys’ Title Guar. Fund, Inc., 866 F.2d 1570, 1573–1574 (10th Cir. 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989024271&pubNum=0000350&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_1573&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1573). |
| [38](#co_fnRef_I8158c362d6ee11ea8f41e1f6f2aa78) | As standards by which to measure the performance of a title insurance underwriter vis-à-vis its agent prior to an agent’s defalcation, attorneys also have offered into evidence “Agency Control and Escrow Internal Control Guidelines” that have been promulgated by title insurers’ national trade association, the American Land Title Association. Upon realizing that its guidelines were being used in this way, the ALTA revised them in 1999 to prevent their placing additional exposures on title insurers. |
| [39](#co_fnRef_I8158c363d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that a title insurer was liable for the theft of funds by the purchaser’s attorney where the attorney was also determined to be the insurer’s agent and where the insurer agreed to indemnify the lender for theft of funds by the purchaser’s attorney under a closing protection letter). Clients’ Security Fund is the companion case to Sears. The issues present in Sears also are discussed in Clients’ Security Fund, with the following addition: whether the insurer was subrogated to the lender’s rights against the purchaser under the closing protection letter. *See* [§ 20:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a18&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra*.  The court noted that the purchaser paid the premiums for title insurance twice and in each instance the attorney never submitted the same to the insurer. The court reasoned “an average person in that situation would reasonably expect that his or her attorney, who was also acting on behalf of the title-insurance carrier, would remove all the encumbrances and that the title insurance would protect against any failure resulting in a loss because an encumbrance was not removed.” [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The court concluded that the purchaser’s expectation was that he would receive coverage for encumbrances and problems affecting his property. Furthermore, the purchaser never received notice from the insurer that he did not have coverage because the insurer communicated with the purchaser’s attorney instead of the purchaser. [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  The court also pointed out that the insurer failed to provide the purchaser with the statutorily required notice that informs any mortgagor of the right to buy title insurance. The court reasoned that if the insurer had provided the purchaser with this required notice, the purchaser would have been apprised of his lack of title insurance coverage due to his attorney’s nonpayment. [634 A.2d at 97](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_97&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_97). Additionally, the insurer failed to advise the purchaser of his right to seek protection under a closing protection letter. Therefore, the court concluded, the totality of these events made the purchaser a putative insured and on the basis of such conclusion, the insurer was obligated to indemnify the purchaser for any loss relating from the theft. [634 A.2d at 97](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_97&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_97).  *See, generally,* [Metropolitan Life Ins. Co. v. First Sec. Bank of Idaho, 94 Idaho 489, 491 P.2d 1261 (1971)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1971126729&pubNum=0000661&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Valle, Comment, Title Waves—New Jersey Supreme Court Decisions Bring a Sea Change in the Insurance Industry: A Comment on Sears Mortgage Corp. v. Rose and Clients’ Security Fund v. Security Title and Guaranty Co., 47 Rutgers L. Rev. 37 (1994). |
| [40](#co_fnRef_I8158ea70d6ee11ea8f41e1f6f2aa78) | *See also* [First Financial Savings & Loan Association v. Title Insurance Company of Minnesota, 557 F. Supp. 654, 663 (N.D. Ga. 1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983109380&pubNum=0000345&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_345_663&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_663) (holding that plaintiff’s allegations that the title insurer was liable for misrepresentations of the lender’s attorneys where the attorneys also were acting as agent for the insurer raised a material fact issue); [Berkeley Homes, Inc. v. Radosh, 172 W. Va. 683, 310 S.E.2d 201, 204 (1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983157015&pubNum=0000711&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_711_204&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_711_204) (holding an insurer liable for its attorney agent’s defalcation). |
| [41](#co_fnRef_I8158ea71d6ee11ea8f41e1f6f2aa78) | [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [42](#co_fnRef_I8158ea72d6ee11ea8f41e1f6f2aa78) | [Clients’ Sec. Fund of the Bar of New Jersey v. Security Title and Guar. Co., 134 N.J. 358, 634 A.2d 90 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153048&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Accord* [Fifth Third Mortg. Co. v. Chicago Title Ins. Co., 758 F. Supp. 2d 476, 483 (S.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2024221999&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4637_483&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_483). |
| [43](#co_fnRef_I815a22f0d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 80 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_80&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_80). |
| [44](#co_fnRef_I815a22f1d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 80 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_80&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_80). |
| [45](#co_fnRef_I815a4a00d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 83 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_83&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_83). |
| [46](#co_fnRef_I815a4a01d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 81 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_81&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_81). |
| [47](#co_fnRef_I815a4a02d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 81 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_81&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_81). |
| [48](#co_fnRef_I815a4a03d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 83 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_83&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_83). |
| [49](#co_fnRef_I815a4a04d6ee11ea8f41e1f6f2aa78) | [Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 84 (1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_84&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_84). At the end of the Sears opinion, the court set forth suggested measures for title insurers and attorneys in order to avoid the fact scenario posed in Sears:  In its communications, the title-insurance carrier must inform the attorney that he or she will be performing essential functions on behalf of the carrier and will be deemed to be the agent of the carrier, and further, that the carrier will prescribe the procedures for all disbursements. That requirement implicates the problem of potential conflicts of interest and triggers the duty of full disclosure. Hence, the completion of those functions, including that communication, must also be sent to the purchaser. Furthermore, the carrier may prescribe requirements for the approval and control of closing attorneys that will reduce the risks that irresponsible or unqualified attorneys will misappropriate, misuse, or mishandle closing funds. Finally, if the purchaser insists on retaining his or her own attorney, whether or not approved by the insurer, because the risk of attorney defalcation in these circumstances is an incident to the risks covered by title insurance, the title insurance carrier shall advise the purchaser of that risk and indicate that it is a risk that is or may be covered by the title-insurance policy. We expect that title-insurance carriers will conform their practice to that which they regularly follow with respect to third-party lenders. [Sears, 634 A.2d at 89](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993153044&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_89&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_89). |
| [50](#co_fnRef_I815a4a05d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [Bergin Financial, Inc. v. First American Title Co., 2008 WL 268823 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014995309&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [397 Fed. Appx. 119 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (noting that the closing agent served expressly as the mortgage lender’s agent in closing loans, not as the title insurance underwriter’s agent); [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [GE Capital Mortg. Services, Inc. v. Privetera, 346 N.J. Super. 424, 434, 788 A.2d 324, 329 (App. Div. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002055466&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_162_329&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_162_329) (stating that plaintiff mortgagee was in the best position to protect itself and, failing to do so, could not seek recompense from the title insurer). *See, generally,* [TierOne Bank v. U.S. Money Source, Inc., 2007 WL 2904187 (D. Neb. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013462630&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that mortgage originator was in a better position to prevent falsified loans, closing protection letters, and title insurance commitments by the careful selection and verification of the closing agent than the warehouse lender). |
| [51](#co_fnRef_I815a4a06d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, [National Mortgage Warehouse, LLC v. Bankers First Mortgage Co., Inc., 190 F. Supp. 2d 774 (D. Md. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002177974&pubNum=0004637&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [52](#co_fnRef_I815a7110d6ee11ea8f41e1f6f2aa78) | [Coldwell Banker Relocation Services, Inc. v. TRW Title Ins. Co., 74 F.3d 1243 (8th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996025237&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lawyers Title Ins. Corp. v. U.S. Sav. Bank of America, 1990 WL 29214 (D. Mass. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990053153&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that the title insurance policy included coverage for a mortgage lien not set forth in the policy because the insurer ratified the issuing agent’s prior exclusions of liens from the policy when the agent possessed the funds to pay off such liens). In Lawyers Title Ins. Corp., an attorney absconded with the funds meant to pay off a prior lien. The attorney’s law firm was an issuing agent for Lawyers Title. The local practice of attorneys was to issue the policy without listing any mortgage liens prior to the pay off of such liens where the attorney possessed the funds to release the liens. Lawyers Title was aware of and had not objected to this practice. Lawyers Title Ins. Corp. v. U.S. Sav. Bank of America, at \*2, 3. |
| [53](#co_fnRef_I815a7111d6ee11ea8f41e1f6f2aa78) | [Coldwell Banker Relocation Services, Inc. v. TRW Title Ins. Co., 74 F.3d 1243 (8th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996025237&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unpublished disposition). *See also* [Ticor Title Ins. Co. v. National Abstract Agency, Inc., 2008 WL 2157046 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016169233&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [54](#co_fnRef_I815a7112d6ee11ea8f41e1f6f2aa78) | [Coldwell Banker Relocation Services, Inc. v. TRW Title Ins. Co., 74 F.3d 1243 (8th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996025237&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [55](#co_fnRef_I815a7113d6ee11ea8f41e1f6f2aa78) | [Coldwell Banker Relocation Services, Inc. v. TRW Title Ins. Co., 74 F.3d 1243 (8th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996025237&pubNum=0000506&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Ticor Title Ins. Co. v. National Abstract Agency, Inc., 2008 WL 2157046, \*8-9 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016169233&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [56](#co_fnRef_I815a7114d6ee11ea8f41e1f6f2aa78) | [Restatement of Torts 2d § 909](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0290694855&pubNum=0101577&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Werner and Borstein, Present Climate for Title Agents, in ABA, Attorney’s Role in Title Insurance, E-10 (1990). |
| [57](#co_fnRef_I815a7115d6ee11ea8f41e1f6f2aa78) | *See* [Enright v. Lubow, 202 N.J. Super. 58, 493 A.2d 1288 (App. Div. 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985131170&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), on reconsideration, [215 N.J. Super. 306, 521 A.2d 1300 (App. Div. 1987)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1987031047&pubNum=0000162&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that punitive damages against agent could not be assessed against underwriter where agent was independent, did not function in a managerial capacity for the underwriter, and its intentional omission of a title defect in the title report was not ratified by the underwriter); [Lane v. Security Title & Trust Co., 382 S.W.2d 326 (Tex. Civ. App. Dallas 1964)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1964128401&pubNum=0000713&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), writ refused n.r.e., (Jan. 27, 1965) (holding that agent’s liability for punitive damages for false representation was not assessable against underwriter under Restatement of Torts since agent did not act in a managerial capacity for the principal in the performance of the fraudulent acts; the agent had only the authority to issue commitments and policies prepared by the insurer). |
| [58](#co_fnRef_I815a9820d6ee11ea8f41e1f6f2aa78) | [Stout Street Funding LLC v. Johnson, 2012 WL 1994800, \*7 (E.D. Pa. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027837850&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [59](#co_fnRef_I815a9821d6ee11ea8f41e1f6f2aa78) | [James B. Nutter & Company v. Old Republic National Title Insurance Company, 2016 WL 5792686, \*4 (N.D. Ga. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2039912546&pubNum=0000999&originatingDoc=I26190994355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 20:22 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I81667f00d6ee11ea8f41e1f6f2a)**

§ 20:22. Exculpatory clauses in escrow agreements

Whether an exculpatory clause in an escrow agreement will prevent the imposition of liability upon the escrow agent will depend on the language employed[1](#co_footnote_I8166a610d6ee11ea8f41e1f6f2a) and the state.[2](#co_footnote_I8166a611d6ee11ea8f41e1f6f2a) In determining their enforceability, courts generally try to balance the public’s need for protection against the rights of parties to freely enter into and live with the terms of their contracts.

For example, in *Akin v. Business Title Corporation*,[3](#co_footnote_I8166a612d6ee11ea8f41e1f6f2a) Business Title acted as escrow agent in connection with Akin’s sale of his business. As part of the purchase price, Akin received a note secured by a chattel mortgage on personal property in the business. Business Title forwarded the mortgage to California Land Title Corporation, who recorded it in the wrong office.[4](#co_footnote_I8166a613d6ee11ea8f41e1f6f2a) The erroneous recording prevented Akin from recovering under his mortgage. Business Title claimed that an exculpatory clause contained in the escrow agreement between Akin and Business Title barred any claim against it by Akin. The court held that the exculpatory clause in the escrow agreement was invalid and, therefore, Business Title was liable for its negligent recordation of the chattel mortgage.[5](#co_footnote_I8166a614d6ee11ea8f41e1f6f2a) The court set forth the following factors to be considered in determining whether a provision absolving a party of its own negligence will be invalid:

1. (1) Does the provision concern a business of a type generally suitable for public regulation?
2. (2) Is the party seeking exculpation engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public?
3. (3) Does the party hold itself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards?
4. (4) In the economic setting of the transaction, does the party invoking exculpation possess a decisive advantage of bargaining strength against any member of the public who seeks the services, due to the essential nature of the service?
5. (5) In exercising a superior bargaining power, does the party confront the public with a standardized adhesion contract and make no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence?
6. (6) As a result of the transaction, is the person or property of the purchaser placed under the control of the party, subject to the risk of carelessness by such party or his agents?[6](#co_footnote_I8166cd20d6ee11ea8f41e1f6f2a)

The court concluded, first, that the transaction in *Akin* affected the public interest. The court pointed out that escrow companies are regulated by licensing requirements and reasoned that regulations that impose professional standards indicate “public concern for maintaining a standard of service which exculpation would tend to undermine.”[7](#co_footnote_I8166cd21d6ee11ea8f41e1f6f2a)

With regard to the second factor, the court determined that escrow companies perform an important public service. “Although it is possible for a party involved in a real estate transaction to get another escrow agent, or to not use the standard escrow procedure, it often is a matter of ‘practical necessity’ for some members of the public to use the designated escrow agent.”[8](#co_footnote_I8166cd22d6ee11ea8f41e1f6f2a) The court also found that an escrow company satisfies the third factor.

In discussing the fourth factor, the court stated that an advantage in bargaining power is not necessary for a monopoly; the power “may simply be the result of a ‘monopoly’ in judgment, brains and foresight as where one party prepares the contract from which the other signs without considering the possible consequences.”[9](#co_footnote_I8166f430d6ee11ea8f41e1f6f2a) Furthermore, an escrow company’s services satisfy the fifth factor because escrow companies present standard adhesion contacts to the public. Customers are not able to pay an additional fee for removal of the exculpatory provision.[10](#co_footnote_I8166f431d6ee11ea8f41e1f6f2a) Finally, the parties to the transaction are placed under the escrow company’s control and are subject to the risk of its carelessness.[11](#co_footnote_I8166f432d6ee11ea8f41e1f6f2a)

The New Mexico Appeals Court in *Lynch v. Santa Fe National Bank*[12](#co_footnote_I8166f433d6ee11ea8f41e1f6f2a) also considered whether an escrow agent who negligently terminated escrows in violation of escrow instructions could deny liability due to exculpatory clauses.[13](#co_footnote_I8166f434d6ee11ea8f41e1f6f2a) The court set forth the following rule:

[E]xculpatory clauses in contracts of this kind are not favorites of the law. They are strictly construed against the promisee and will not be enforced if the promisee enjoys a bargaining power superior to the promisor, as where the promisor is required to deal with the promisee on his own terms … Nor will a contract be enforced if it has the effect of exempting a party from negligence in the performance of a public duty, or where a public interest is involved.[14](#co_footnote_I8166f435d6ee11ea8f41e1f6f2a)

The court noted that the form containing the exculpatory clause in *Lynch* was offered on a take-it-or-leave-it basis and that the clause could not be removed for an additional fee. Focusing on the “required to deal” language of the rule, the court concluded that a party must show an absence of alternatives in order to meet the bargaining power prong of this test.[15](#co_footnote_I8166f436d6ee11ea8f41e1f6f2a) In *Lynch*, the record did not demonstrate that the “plaintiffs sought any alternative sources of escrow, or that in seeking such alternative sources of escrow, they encountered identical exculpatory language with no available alternatives, or that there were not alternatives in the market place.”[16](#co_footnote_I8166f437d6ee11ea8f41e1f6f2a) Because there was no showing of an absence of alternatives, the court determined that the plaintiffs had not met the bargaining power prong of the test.

The court also found that the plaintiffs did not meet the public interest prong of the test because they did not allege that a public duty was violated or that the clause exculpating the escrow company from its negligence was violative of the public interest.[17](#co_footnote_I81671b40d6ee11ea8f41e1f6f2a) The court distinguished the California cases, noting that, unlike California escrow agents, escrow agents in New Mexico are not regulated.[18](#co_footnote_I81671b41d6ee11ea8f41e1f6f2a) The court reasoned that the decision to enforce an exculpatory provision may be one of policy. The court stated the policy at issue in *Lynch* was the freedom to contract and when that freedom should be limited.[19](#co_footnote_I81671b42d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I81667f00d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I8166a610d6ee11ea8f41e1f6f2aa78) | *See* [Miller v. Craig, 27 Ariz. App. 789, 558 P.2d 984 (Div. 1 1976)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1977195105&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I8166a611d6ee11ea8f41e1f6f2aa78) | *See* [Rooz v. Kimmel, 55 Cal. App. 4th 573, 64 Cal. Rptr. 2d 177 (1st Dist. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997121441&pubNum=0003484&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (noting that provisions exculpating one from one’s own negligence generally are unenforceable); [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* Alcock, Note, Contracts-Exculpatory Provisions—A Bank’s Liability for Ordinary Negligence: Lynch v. Santa Fe National Bank, 12 N.M. L. Rev. 821 (1982). |
| [3](#co_fnRef_I8166a612d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 291 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_291&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_291). |
| [4](#co_fnRef_I8166a613d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 288 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_288&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_288). |
| [5](#co_fnRef_I8166a614d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 291 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_291&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_291). |
| [6](#co_fnRef_I8166cd20d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 289 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_289&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_289). |
| [7](#co_fnRef_I8166cd21d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 289 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_289&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_289). |
| [8](#co_fnRef_I8166cd22d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 290 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_290). |
| [9](#co_fnRef_I8166f430d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 290–291 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_290).  [F]reedom of contract does not commend itself to us as a social ideal in quite the same way [today]. In the more complicated social conditions of our industrialized society it wins approval only to the extent that there is reasonable equality of bargaining power between the parties and no injury is done to the economic interests of the community at large. |
| [10](#co_fnRef_I8166f431d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 290 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_290). |
| [11](#co_fnRef_I8166f432d6ee11ea8f41e1f6f2aa78) | [Akin v. Business Title Corp., 264 Cal. App. 2d 153, 70 Cal. Rptr. 287, 290 (2d Dist. 1968)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1968111879&pubNum=0000227&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_227_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_227_290). |
| [12](#co_fnRef_I8166f433d6ee11ea8f41e1f6f2aa78) | [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I8166f434d6ee11ea8f41e1f6f2aa78) | [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247, 1253 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_1253&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1253). |
| [14](#co_fnRef_I8166f435d6ee11ea8f41e1f6f2aa78) | [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247, 1253 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_1253&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1253). |
| [15](#co_fnRef_I8166f436d6ee11ea8f41e1f6f2aa78) | *See also* Alcock, Note, Contracts-Exculpatory Provisions—A Bank’s Liability for Ordinary Negligence: Lynch v. Santa Fe National Bank, 12 N.M. L. Rev. 821, 826 (1982) (commenting, “It is left to future cases to determine whether a consumer must exhaust every possible source of the goods or services he seeks before entering into a restrictive contract in order to obtain relief from the terms of the contract in New Mexico’s courts”). |
| [16](#co_fnRef_I8166f437d6ee11ea8f41e1f6f2aa78) | [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I81671b40d6ee11ea8f41e1f6f2aa78) | The plaintiffs contended that the defendant, being a bank, was performing a service of public interest. The court disagreed stating that the plaintiff “assume[d] that the defendant’s escrow service is a banking function.” The court commented with regard to the application of the public interest prong: “the question of whether the escrow service was a public service is to be determined without regard to the fact that defendant is a bank.  [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247, 1252 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_1252&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1252). *See also* Alcock, note 316, at 828 (“[w]ith its requirement that the activity be specifically regulated to be a ‘public interest’ activity, the Lynch court overlooked the nature of the relationship between a bank and its customers. This relationship exists regardless of the particular service involved. The American banking industry is a highly regulated business”). |
| [18](#co_fnRef_I81671b41d6ee11ea8f41e1f6f2aa78) | [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247, 1253 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_1253&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1253). |
| [19](#co_fnRef_I81671b42d6ee11ea8f41e1f6f2aa78) | [Lynch v. Santa Fe Nat. Bank, 97 N.M. 554, 627 P.2d 1247, 1253 (Ct. App. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981129866&pubNum=0000661&originatingDoc=I26190997355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_1253&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_1253). |

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2 Title Ins. Law § 20:23 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I816d35c0d6ee11ea8f41e1f6f2a)**

§ 20:23. Regulatory liability for escrow activities

A state may regulate an escrow holder’s conduct by imposing penalties through its escrow licensing requirements. For example, an Arizona escrow holder’s license may be suspended or revoked if the escrow holder makes material misrepresentations or false statements or conceals material facts from any person in the course of its escrow business.[1](#co_footnote_I816d35c1d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I816d35c0d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I816d35c1d6ee11ea8f41e1f6f2aa78) | [Ariz. Rev. Stat. § 6-801](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS6-801&originatingDoc=I2619099a355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))-37. |

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2 Title Ins. Law § 20:24 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I817217c0d6ee11ea8f41e1f6f2a)**

§ 20:24. Statutory liability for escrow activities

A few states have adopted statutes that specifically impose liability on title insurance companies and/or underwriters for losses due to the title companies’ escrow activities. As noted in [§ 20:21](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs20%3a21&originatingDoc=I2619099d355a11e2b39ae69c3c43398a&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra*, “California, Florida, and Utah statutes impose liability on the title insurance underwriter for funds deposited with its agent.”[1](#co_footnote_I817217c2d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I817217c0d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I817217c2d6ee11ea8f41e1f6f2aa78) | [Cal. Ins. Code § 12376](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12376&originatingDoc=I2619099d355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Fla. Stat. Ann. § 627.792](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.792&originatingDoc=I2619099d355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“a title insurer is liable for the defalcation, conversion, or misappropriation by a licensed title insurance agent of funds held in trust by the agent …”). The statute imposes liability on insurers for thefts from escrow by their agents even though the theft occurs outside the scope of the title insurance agency. *See* Williamson and Herrero, The Sins of the Agents: Title Insurers’ Liabilities for the Acts of Their Agents in Real Estate Closings: Recent Developments. (This article may be obtained by contacting Gunster, Yoakley, Valdes-Fauli & Stewart, P.A., One Biscayne Tower, Two South Biscayne Boulevard, Suite 3400, Miami, Florida 33131.) (stating that commentators argue that this statute, along with [Fla. Stat. Ann. § 627.786](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS627.786&originatingDoc=I2619099d355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), limits an insurer’s liability for the torts of its agents as set forth therein); [Utah Code Ann. § 31A-23-308](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23-308&originatingDoc=I2619099d355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (providing that title insurance underwriter is liable to others dealing with its agents for funds deposited in escrows, closings, or settlements regardless of the contractual relationship between the title insurance underwriter and the agent). *But see* [Bodell Const. Co. v. Stewart Title Guar. Co., 945 P.2d 119 (Utah Ct. App. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997175456&pubNum=0000661&originatingDoc=I2619099d355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (construing the statute strictly against the insured plaintiff). |

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2 Title Ins. Law § 20:25 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I8178ce80d6ee11ea8f41e1f6f2a)**

§ 20:25. Statutory liability for escrow activities—Deceptive Trade Practices Acts

States’ consumer protection laws have been applied to escrow agents.[1](#co_footnote_I8178f590d6ee11ea8f41e1f6f2a) For example, the Texas Deceptive Trade Practices Act prohibits any unconscionable course of action in a transaction for goods or services.[2](#co_footnote_I8178f591d6ee11ea8f41e1f6f2a) If such action adversely affects a consumer, the actor is subject to liability under the Act.[3](#co_footnote_I8178f592d6ee11ea8f41e1f6f2a) The Texas Court of Appeals commented in *Zimmerman v. First American Title Ins. Co.*[4](#co_footnote_I8178f593d6ee11ea8f41e1f6f2a) on the Act’s application, stating that coverage under the Act is “not restricted to deceptive practices committed by parties furnishing goods and services, but rather extends to any deceptive practice made in connection with the purchase or lease of such goods or services.”[5](#co_footnote_I8178f594d6ee11ea8f41e1f6f2a) Additionally, the deceptive act need not occur simultaneously with the sale or lease of goods or services that form the basis of any consumer’s complaint.[6](#co_footnote_I8178f595d6ee11ea8f41e1f6f2a) The court held that where a title insurance company acts as closing agent, the party for whom it acts may have a cause of action for nondisclosures or misrepresentations under the Deceptive Trade Practices Act, regardless of whether a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is issued to that party.[7](#co_footnote_I8178f596d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I8178ce80d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I8178f590d6ee11ea8f41e1f6f2aa78) | *See* [Szelc v. Stanger, 2011 WL 1467187 (D.N.J. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025093334&pubNum=0000999&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Commercial Escrow Co. v. Rockport Rebel, Inc., 778 S.W.2d 532, 536–538 (Tex. App. Corpus Christi 1989)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1989126156&pubNum=0000713&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_713_536&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_536), writ denied, (Jan. 10, 1990) (holding that an escrow holder was liable under the Texas Deceptive Trade Practices Act for its disbursement of the seller’s funds in violation of the purchase contract); [Bowers v. Transamerica Title Ins. Co., 100 Wash. 2d 581, 675 P.2d 193, 201 (1983)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1983157091&pubNum=0000661&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_661_201&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_201) (holding an escrow holder violated the Washington Consumer Protection Act when it assumed the role of an attorney in drafting instruments for a real estate transaction and failed to advise the seller of the hazards of accepting an unsecured note). The Washington Consumer Protection Act, Wash. Rev. Code § 19.86 (1961), prohibits unfair or deceptive trade practices in the conduct of any trade or commerce. Any person injured by violation of the statute may bring a civil action to enjoin further violations or to recover actual damages with costs and attorney’s fees. The court may award up to three times the actual harm sustained under the Act. A claimant must show (i) the conduct was unfair or deceptive, (ii) actual harm from such conduct, and (iii) the conduct is likely to be repeated. *See also* [Splash Design, Inc. v. Lee, 103 Wash. App. 1036, 2000 WL 1772519 (Div. 1 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000631067&pubNum=0000800&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (unpublished). *Compare* [Rockwell v. Klein, 2000 WL 1887846 (Conn. Super. Ct. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001043298&pubNum=0000999&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment rev’d on other grounds, [72 Conn. App. 683, 806 A.2d 580 (2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002607801&pubNum=0000162&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (recognizing the applicability of the state’s unfair trade practices act, but finding that none of the parties did anything wrong or unfair). |
| [2](#co_fnRef_I8178f591d6ee11ea8f41e1f6f2aa78) | [Tex. Bus. & Com. Code. § 17.46](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000168&cite=TXBCS17.46&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (1968). |
| [3](#co_fnRef_I8178f592d6ee11ea8f41e1f6f2aa78) | [Tex. Bus. & Com. Code. § 17.46](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000168&cite=TXBCS17.46&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (1968). |
| [4](#co_fnRef_I8178f593d6ee11ea8f41e1f6f2aa78) | [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 694 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_713_694&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_694), writ denied, (Nov. 14, 1990). The Zimmerman court held that the Zimmerman’s complaint stated a valid cause of action under the Texas Deceptive Trade Practices Act. |
| [5](#co_fnRef_I8178f594d6ee11ea8f41e1f6f2aa78) | [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 696 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_713_696&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_696), writ denied, (Nov. 14, 1990). |
| [6](#co_fnRef_I8178f595d6ee11ea8f41e1f6f2aa78) | [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 696 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_713_696&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_696), writ denied, (Nov. 14, 1990). |
| [7](#co_fnRef_I8178f596d6ee11ea8f41e1f6f2aa78) | [Zimmerman v. First American Title Ins. Co., 790 S.W.2d 690, 696 (Tex. App. Tyler 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990043838&pubNum=0000713&originatingDoc=I261909a0355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_713_696&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_713_696), writ denied, (Nov. 14, 1990). |

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2 Title Ins. Law § 20:26 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I817f5e30d6ee11ea8f41e1f6f2a)**

§ 20:26. Statutory liability for escrow activities—RICO

When multiple parties participate in an escrow scheme to defraud lenders or other real estate investors, conspiracy and civil RICO theories may be available. Allegations that a title insurance agent merely provided regular title and escrow services, or even negligent or deficient title or escrow services, in a transaction do not state a cause of action under RICO.[1](#co_footnote_I817ffa70d6ee11ea8f41e1f6f2a) The title insurance agent must have conducted or participated in the operation or management of the RICO enterprise, though the agent need not have controlled the enterprise.[2](#co_footnote_I817ffa71d6ee11ea8f41e1f6f2a) For example, allegations that the title insurance agent issued title commitments falsely certifying that seller in a “flip” transaction was the actual owner of the property, concealed the second escrow, or otherwise concealed material information may suffice to make the title insurance agent an integral participant under RICO.[3](#co_footnote_I817ffa72d6ee11ea8f41e1f6f2a)

Even where a title insurance company’s employee is actively involved in such a scheme, however, if the title company as employer did not participate in the conspiracy, the title company may not be held liable under a conspiracy theory or under RICO.[4](#co_footnote_I817ffa73d6ee11ea8f41e1f6f2a) Nevertheless, that title insurance company still may be held liable for the employee’s misconduct based on *respondeat superior*, because an “employer is vicariously liable for the negligent or tortuous acts of its employee acting within the scope and course of employment.”[5](#co_footnote_I817ffa74d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [\*](#co_fnRef_I817f5e30d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I817ffa70d6ee11ea8f41e1f6f2aa78) | [BancOklahoma Mortg. Corp. v. Capital Title Co., Inc., 194 F.3d 1089, 1101, R.I.C.O. Bus. Disp. Guide (CCH) P 9790 (10th Cir. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999234732&pubNum=0000506&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_506_1101&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1101); [University of Maryland at Baltimore v. Peat, Marwick, Main & Co., 996 F.2d 1534, 1539–40, R.I.C.O. Bus. Disp. Guide (CCH) P 8324 (3d Cir. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993127568&pubNum=0000350&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_350_1539&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1539). |
| [2](#co_fnRef_I817ffa71d6ee11ea8f41e1f6f2aa78) | *See* [Imperial Capital Bank v. Sussex Group, LLC, 2009 WL 2497326, \*4 (W.D. Okla. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019620037&pubNum=0000999&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I817ffa72d6ee11ea8f41e1f6f2aa78) | *See* [Imperial Capital Bank v. Sussex Group, LLC, 2009 WL 2497326, \*5–\*6 (W.D. Okla. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019620037&pubNum=0000999&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I817ffa73d6ee11ea8f41e1f6f2aa78) | *See* [Bergin Financial, Inc. v. First American Title Co., 2008 WL 268823 (E.D. Mich. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014995309&pubNum=0000999&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [397 Fed. Appx. 119 (6th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022815132&pubNum=0006538&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Baker ex rel. Hall Brake Supply, Inc. v. Stewart Title & Trust of Phoenix, Inc., 197 Ariz. 535, 5 P.3d 249, R.I.C.O. Bus. Disp. Guide (CCH) P 9884 (Ct. App. Div. 1 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000299617&pubNum=0004645&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I817ffa74d6ee11ea8f41e1f6f2aa78) | [Baker ex rel. Hall Brake Supply, Inc. v. Stewart Title & Trust of Phoenix, Inc., 197 Ariz. 535, 5 P.3d 249, 254–255, R.I.C.O. Bus. Disp. Guide (CCH) P 9884 (Ct. App. Div. 1 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000299617&pubNum=0004645&originatingDoc=I261909a3355a11e2b39ae69c3c43398a&refType=RP&fi=co_pp_sp_4645_254&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4645_254). |

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2 Title Ins. Law § 20:27 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 20. Title Insurers’ Liability for Escrow and Closing Services****[\*](#co_footnote_I818a33a0d6ee11ea8f41e1f6f2a)**

§ 20:27. Contributory negligence

Jurisdictions vary on whether contracting to perform as escrowee creates a fiduciary duty to the parties to the escrow in contract, under principles of agency law, in equity, or in tort. One important difference is whether the escrowee may defend on grounds that a party to the escrow was contributorily negligent. For example, in *Federal Deposit Insurance Corp. v. Chicago Title Ins. Co.*, the Court found that, “in Illinois, a claim for breach of fiduciary duty is not treated as a tort claim,” but is “‘controlled by the substantive laws of agency, contract, and equity.’”[1](#co_footnote_I818a5ab0d6ee11ea8f41e1f6f2a) Where breach of fiduciary duty is not a tort claim, “comparative negligence is not a defense to breach of fiduciary duty” and “‘the wrongdoer is liable for the entire amount of the loss occasioned by his act.’”[2](#co_footnote_I818a5ab1d6ee11ea8f41e1f6f2a)

That makes sense given that the fiduciary relationship is characterized by the “trust and confidence” accorded to the fiduciary and the position of “influence and superiority” the fiduciary obtains by virtue of that relationship…. Absolving a fiduciary of fault, in whole or in part, on the basis of another party’s negligence would be inconsistent with the relationship giving rise to a fiduciary’s duty…. (“The purpose of a fiduciary relationship would be completely undermined if a beneficiary’s negligent conduct could be used by the fiduciary as a defense against the person he is supposed to protect….”).

Compare the fiduciary relationship to that of tortfeasor and his victim in an ordinary negligence claim, where both the tortfeasor and the injured party have the same general duty to exercise ordinary care…. While a fiduciary owes a duty of reasonable care, its duty also “encompasses the obligations of fidelity, honesty, and good faith.” … (“A fiduciary relationship imposes a general duty on the fiduciary to refrain from seeking a selfish benefit during the relationship.” (internal quotation marks omitted)). Thus, there is an asymmetry of duties between a fiduciary and the beneficiary. By assuming the status of fiduciary, the fiduciary assumes a heightened responsibility to protect the beneficiary’s interests and is therefore wholly responsible for any losses caused by any breach of its fiduciary duty.[3](#co_footnote_I818a5ab2d6ee11ea8f41e1f6f2a)

Therefore, the Court held Chicago Title Insurance could not seek a comparative negligence reduction to the damages resulting from its breach of fiduciary duty.

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| **Footnotes** | |
| [\*](#co_fnRef_I818a33a0d6ee11ea8f41e1f6f2aa78) | Ch 20 originally was coauthored by Prof. Joyce Palomar and attorney Kristy D. Freeman. Prof. Palomar has written its annual updates since. Ms. Freeman was an attorney with Thompson & Knight L.L.P. in Dallas at the time of her contribution. Real estate law was her primary practice area. *See* p. xii. |
| [1](#co_fnRef_I818a5ab0d6ee11ea8f41e1f6f2aa78) | [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*2 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=I9950d9a2d6ec11eaa612ec0a8b889219&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding contributory negligence of lender did not reduce Chicago Title’s liability found by jury for breach of fiduciary duty, negligence or negligent misrepresentation in failing to disclose evidence of same-day flip transactions with different prices). |
| [2](#co_fnRef_I818a5ab1d6ee11ea8f41e1f6f2aa78) | [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*2 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=I9950d9a2d6ec11eaa612ec0a8b889219&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I818a5ab2d6ee11ea8f41e1f6f2aa78) | [Federal Deposit Insurance Corporation v. Chicago Title Insurance Company, 2019 WL 6497354, \*2-3 (N.D. Ill. 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049768910&pubNum=0000999&originatingDoc=I9950d9a2d6ec11eaa612ec0a8b889219&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (*citations omitted*). |

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2 Title Ins. Law § 21:1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:1. Real Estate Settlement Procedures Act

This chapter examines the impact of the Real Estate Settlement Procedures Act on title agencies, title insurance underwriters, and consumers of title insurance.[1](#co_footnote_I819ad570d6ee11ea8f41e1f6f2a)

In 1970, Congress directed the Secretary of Housing and Urban Development (HUD) and the Administrator of Veterans Affairs to undertake a study and make recommendations on legislative and administrative actions the federal government could take to reduce real estate settlement costs for home buyers.[2](#co_footnote_I819afc80d6ee11ea8f41e1f6f2a) In its Summary of Findings, the HUD Report found:

Competitive forces in the conveyancing industry manifest themselves in an elaborate system of referral fees, kickbacks, rebates, commissions and the like as inducements to those firms and individuals who direct the placement of business. These practices are widely employed, rarely inure to the benefit of the home buyer, and generally increase total settlement costs.[3](#co_footnote_I819afc81d6ee11ea8f41e1f6f2a)

Congress responded to the HUD Report by passing the Real Estate Settlement Procedures Act of 1974[4](#co_footnote_I819afc82d6ee11ea8f41e1f6f2a) (RESPA) to ensure home buyers and sellers more effective advance disclosure of settlement costs and to eliminate kickbacks and referral fees that unnecessarily increase the costs of settlement services.[5](#co_footnote_I819afc83d6ee11ea8f41e1f6f2a) RESPA applies to federally related mortgage loans, home refinancing and home equity loans. Because of the breadth of its definition of “federally related mortgage,”[6](#co_footnote_I819d1f60d6ee11ea8f41e1f6f2a) RESPA will apply to most loans for residential real property. HUD issued [**Regulation X**](http://practicallawconnect.thomsonreuters.com/Document/I8d74ec31ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (“Reg X”) in 1976 to assist in the interpretation and enforcement of RESPA.[7](#co_footnote_I819d4670d6ee11ea8f41e1f6f2a) In 2010, the [**Dodd-Frank Wall Street Reform and Consumer Protection Act**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d7f2eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) transferred the regulatory authority of RESPA from HUD to the [**Consumer Financial Protection Bureau**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a1221ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (”CFPB”). CFPB subsequently republished Regulation X without changes[8](#co_footnote_I819d4671d6ee11ea8f41e1f6f2a) that materially affect title insurance companies.

RESPA has a broad coverage, preventing not just obvious kickbacks and direct rebates, but the transfer of any “thing of value” in exchange for referral of settlement services.[9](#co_footnote_I819d4672d6ee11ea8f41e1f6f2a) RESPA also prevents the splitting of fees for settlement services with someone who merely referred the purchaser to the service provider.[10](#co_footnote_I819d4673d6ee11ea8f41e1f6f2a) RESPA defines “settlement services” as any service involved in the transfer of a home, including:

title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement.[11](#co_footnote_I819d4674d6ee11ea8f41e1f6f2a)

Reg X specifies that abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies; notarization, delivery, and recordation of documents; conducting of settlement by a settlement agent; and any related services are included within the definition of “settlement services.”[12](#co_footnote_I819d4675d6ee11ea8f41e1f6f2a)

Two paragraphs in [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of RESPA were designed to bar all the various and sundry practices that creative people may devise in order to compensate another party involved in the real estate settlement process for business referrals:

1. (a) No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.
2. (b) No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.[13](#co_footnote_I819d6d80d6ee11ea8f41e1f6f2a)

[Section 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) goes on to list payments that do *not* violate RESPA and expressly exempts fees paid to attorneys for services actually rendered and payments from a title insurance underwriter to its agent for services performed in the issuance of a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).[14](#co_footnote_I819d6d81d6ee11ea8f41e1f6f2a) [Section 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) thus also exempts the situation in which an attorney represents a client in a real estate transaction and also either acts as title insurance agent or arranges for title insurance from a title insurance agency owned by the attorney or law firm.[15](#co_footnote_I819d6d82d6ee11ea8f41e1f6f2a) In the latter scenario, the attorney must comply with the affiliated business disclosure requirements which also are set out in [§ 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Affiliated business arrangements and disclosure requirements are considered in [§ 21:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a7&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this chapter.[16](#co_footnote_I819d9491d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I819ad570d6ee11ea8f41e1f6f2aa78) | Many issues beyond the scope of this treatise may also be involved in RESPA claims involving title insurance agencies and underwriters, such as whether the loans involved were federally related, application of yield spread premium cases, the exemption for secondary market transactions, whether disclosures were adequate, escrow account provisions, transfers of loan servicing rights, etc. For such issues, the reader is referred to Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed. |
| [2](#co_fnRef_I819afc80d6ee11ea8f41e1f6f2aa78) | Report of Department of Housing and Urban Development and Veterans’ Administration on Mortgage Settlement Costs 1 (Mar. 1972), (hereinafter HUD Report), reprinted in Real Estate Settlement Costs, FHA Mortgage Foreclosures, Housing Abandonment, and Site Selection Policies: Hearings on H.R. 13337 Before the Subcomm. on Housing of the Comm. on Banking & Currency, 92nd Cong., 2d Sess. 737 (1972). |
| [3](#co_fnRef_I819afc81d6ee11ea8f41e1f6f2aa78) | HUD Report at 3. The “competitive forces” HUD identified were described by the Washington Supreme Court as “reverse competition.” [Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r, 178 Wash. 2d 120, 127, 309 P.3d 372 (2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031199016&pubNum=0004645&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citations omitted):  Title insurance is also special in that it is purchased as part of the closing of a real estate transaction. Sometimes title insurance is mandatory in order to secure the funds to close on the transaction. In many cases, consumers have little real opportunity to shop around or to make an informed decision about what title insurance policy to buy; to the consumer, title insurance is “just one more expensive step in the dizzying, convoluted and often confusing flurry of paperwork and signings that culminate in the closing of the home purchase.” Many consumers ultimately buy title insurance from whomever a real estate agent, bank, or other major party to the transaction recommends.  This model is called “reverse competition” because title companies do not cater to their consumers’ needs, but to the needs of the middlemen who can recommend a consumer to a title insurer. Indeed, title companies spend nearly all of their marketing budgets “wining and dining” middlemen in order to gain referrals. |
| [4](#co_fnRef_I819afc82d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. §§ 2601](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2601&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [2617](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2617&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I819afc83d6ee11ea8f41e1f6f2aa78) | *See generally* [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2038, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2038&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2038). |
| [6](#co_fnRef_I819d1f60d6ee11ea8f41e1f6f2aa78) | Like the phrase “settlement services,” the phrase “federally related mortgage loan” is broadly defined. A “federally related mortgage loan” is any loan, other than a temporary construction loan, which is secured by a first lien on residential property designed primarily to house one to four families and which falls into one of the four following categories. [12 U.S.C.A. § 2602(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The first category comprises any loan made by a lender whose deposits or accounts are insured by any federal agency or regulated by a federal agency. [12 U.S.C.A. § 2602(1)(B)(i)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The second category is any loan in whole or in part “insured, guaranteed, supplemented, or assisted in any way” by an officer or agency of the federal government. [12 U.S.C.A. § 2602(B)(ii)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Third is any loan made with the intention of selling it to a federal agency in the secondary mortgage market. [12 U.S.C.A. § 2602(B)(iii)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Finally, the phrase “federally related mortgage loan” includes any loan made by a “creditor” who invests more than $1 million in the residential real estate market. [12 U.S.C.A. § 2602(B)(iv)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I819d4670d6ee11ea8f41e1f6f2aa78) | 24 C.F.R. § 3500. *See generally* [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2035, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2035&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2035).  The HUD staff also has issued informal advisory opinions to give guidance on the interpretation of RESPA. Those issued prior to the publication on November 2, 1992, of the revised regulations were withdrawn. [24 C.F.R. § 3500.4(d)(1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.4&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Yet, many still consider them to be helpful guides. |
| [8](#co_fnRef_I819d4671d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1179 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1179&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1179), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citing [76 Fed. Reg. 78,977 (Dec. 20, 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0368984312&pubNum=0001037&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_78977&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_78977); 12 C.F.R. § 1024. |
| [9](#co_fnRef_I819d4672d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See generally* [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2035, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2035&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2035). |
| [10](#co_fnRef_I819d4673d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Reg X makes it clear that a referral is not itself a settlement service justifying a separate fee. |
| [11](#co_fnRef_I819d4674d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2602(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I819d4675d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.2(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I819d6d80d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(a) & (b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Section 8 of the original RESPA bill was codified as [12 U.S.C.A. § 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); the original cases and treatises therefore frequently talk about [12 U.S.C.A. § 2608(a), (b) & (c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) as RESPA § 8(a), (b) & (c). |
| [14](#co_fnRef_I819d6d81d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  c) Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or … (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed  … |
| [15](#co_fnRef_I819d6d82d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I819d9491d6ee11ea8f41e1f6f2aa78) | RESPA [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5856fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and Reg X § 3500.15(b)(1)(ii) would require the attorney to disclose at the time that the client retained her that she will require use of a particular title insurance company. |

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2 Title Ins. Law § 21:2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:2. No compensation for referrals under RESPA § 2607(a)

This section will examine RESPA § 2607(a)’s prohibition of fees, kickbacks, and any other compensation for referrals. Section § 2607(b), which prohibits splits of settlement fees received by one settlement service provider with another who performed no actual services and presumably really is being paid for business referrals, will be considered in the section following.

As its quotation in [§ 21:1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a1&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra* shows, RESPA § 2607(a) prohibits the giving, or receiving of kickbacks, fees, or any other thing of value pursuant to an agreement to refer real estate settlement service business.[1](#co_footnote_I81b6e8f1d6ee11ea8f41e1f6f2a) [**Reg X**](http://practicallawconnect.thomsonreuters.com/Document/I8d74ec31ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) repeats and reinforces its prohibitions.[2](#co_footnote_I81b6e8f2d6ee11ea8f41e1f6f2a)

Cash payments for referrals, of course, would violate § 2607(a), as in the case of a title insurance agent who admitted paying $120,000 to $130,000 “under the table to the head of one real estate brokerage firm” over a period of several years.[3](#co_footnote_I81b71000d6ee11ea8f41e1f6f2a) He claimed that it had been the “only way to get the title work.”[4](#co_footnote_I81b71001d6ee11ea8f41e1f6f2a) Making the cash payment indirectly does not avoid § 8(a) liability. One RESPA violation involved “double-check” home-sale closings in which real estate agents received undisclosed “second commissions” after the consumers left the closing table.[5](#co_footnote_I81b71002d6ee11ea8f41e1f6f2a) Also, in *Lawyers Title Ins. Corp. v. Dearborn Title Corp.*,[6](#co_footnote_I81b71003d6ee11ea8f41e1f6f2a) a title agent paid a lender a $300 rental fee for office space when closing a loan if that lender was funding the loan and a $100 rental fee when a different lender was involved. The court concluded that the $200 difference most likely was an illegal kickback that violated RESPA § 8(a), and the Seventh Circuit Court of Appeals reached a similar conclusion. In another example, in 2005, national title insurers were required to refund to consumers millions of dollars in premiums that they had paid to “reinsurance companies”—affiliated with home builders, lenders and real estate agents—that never actually took any reinsurance risk.[7](#co_footnote_I81b71004d6ee11ea8f41e1f6f2a) And, the Washington Supreme Court found that, in 18 months between 2005 and 2006, Chicago Title Insurance Company had advertised for middlemen over 150 times, bought food for hundreds of middlemen meetings and broker opens, sponsored golf tournaments, hosted receptions and hospitality suites, and purchased 26 professional football tickets for middlemen.[8](#co_footnote_I81b84880d6ee11ea8f41e1f6f2a)

Any noncash “*thing of value*”[9](#co_footnote_I81b86f90d6ee11ea8f41e1f6f2a) as compensation for referrals also is prohibited. Specifically cited as violations have been compensation in the form of facsimile machines,[10](#co_footnote_I81b86f91d6ee11ea8f41e1f6f2a) computer equipment, car phones, fully paid vacations and other prizes awarded for “outstanding sales performance,”[11](#co_footnote_I81b86f92d6ee11ea8f41e1f6f2a) boat loan payments made on behalf of a sales agent by a settlement company, and a free secretary supplied to another settlement service provider in exchange for referrals of loan settlement business.[12](#co_footnote_I81b86f93d6ee11ea8f41e1f6f2a) In 2002, HUD settled a case against seven Austin, Texas, title companies that had supplied free Internet tours of homes for real estate agents who sent business their way.

Reg X lists and prohibits other creative means by which one party might camouflage consideration being paid for referrals of business, including discounts on services the referring provider normally purchases from the referred provider, duplicate payments of otherwise allowed charges, salaries or commissions, stock in the company referred to and dividends, payment of partnership profits or franchise royalties, special bank deposits or accounts, credits to the referrer that will be paid at a later date, sales or rentals at special rates, trips, payment of the referrer or another person’s expenses, and reduction of existing obligations.[13](#co_footnote_I81b86f94d6ee11ea8f41e1f6f2a)

If one settlement service provider’s payments to another settlement service provider exceed the reasonable market value of the services rendered, HUD has indicated it will assume that the excess payment was for a referral fee. It has been held that no cause of action exists under RESPA § 2607(a) when the allegation is merely that a settlement service provider has overcharged a consumer with no allegation that a portion of that charge was paid to or received by a third party for a referral. The court reasoned that the intent of § 2607(a) is to not to set rates, but to prohibit kickbacks for referrals.[14](#co_footnote_I81b86f95d6ee11ea8f41e1f6f2a) Most of the cases alleging overcharges have been decided under RESPA § 2607(b) rather than § 2607(a), however, and are cited in §§ [21:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a3&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [21:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a4&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this chapter.

When consumers allege that a title insurance underwriter paid for referrals but cannot show they paid an inflated fee because the underwriter charged the standard premium for title insurance in that market, then courts have split on whether a RESPA claim exists. The first courts to address this issue limited damages to the overcharge that resulted from the referral. Under this interpretation, plaintiffs who failed to show that they paid an inflated charge had no damages and no standing.

[A] plaintiff’s recovery under RESPA is limited to only the excessive or “kicked-back” portion of the settlement charge, and … a plaintiff alleging no charge inflation has no standing to bring suit…. [B]ecause Plaintiffs have not shown that their settlement charges were not reasonably related to the value of the services they received, they have no … RESPA claim for damages under § 2607(a).[15](#co_footnote_I81b896a4d6ee11ea8f41e1f6f2a)

More recently, other federal courts have found that these early cases wrongly failed to consider a 1983 amendment to RESPA that changed the calculation of damages from three times “the value or amount of the fee or thing of value” to three times “any charge paid for such settlement service.”[16](#co_footnote_I81b98100d6ee11ea8f41e1f6f2a) These courts interpret the current language of § 2607(a) literally and do not require plaintiffs alleging an illegal referral to also show they paid an inflated charge.

Of course, giving a discount, services at special rates, or any other thing of value also does not implicate RESPA unless it is in exchange for the recipient making referrals of home buyers or sellers for real estate settlement services. Discounts, services at special rates, and other things of value may be given to another in the real estate business for legitimate business reasons. *Giving or receiving a thing of value* only violates RESPA when it is in exchange for making referrals of business.

Similarly, *referrals* by one settlement service provider to another do not alone violate RESPA § 2607(a). Consumers recognize that they do not know as much about the reputation of professionals as others in the same occupation and often ask professionals to recommend others for related work. In particular, consumers purchase title insurance only on the few occasions that they buy or refinance real estate and pay a single premium at the time that the policy goes into effect. Also, many home buyers assume that it is part of their real estate professionals’ job to arrange inspection, escrow, closing, and title insurance services for the transaction. For these reasons, they have little incentive to shop around and learn about different title agencies and insurance companies. Real estate professionals, in turn, believe that their clients want them to use their experience to recommend reliable providers of other real estate settlement services. Certainly, one real estate settlement service provider may refer a home buyer or seller to another settlement service provider whose work the first provider respects or believes will serve the consumer efficiently and economically.[17](#co_footnote_I81b9a814d6ee11ea8f41e1f6f2a) *Only* when *referrals* are motivated by an *agreement* that the referee will pay or kickback to the referrer a *thing of value* is RESPA § 2607(a) implicated.[18](#co_footnote_I81b9a815d6ee11ea8f41e1f6f2a) The challenge for both HUD and the courts is to keep this bigger picture in view when called upon to parse § 2607(a) into its elements of “thing of value,” “agreement to refer,” and “referral” and determine whether each is met in a particular scenario.

For example, in *Lane v. Residential Funding Corp.*, RFC, a high-volume seller of properties acquired through foreclosures had negotiated rates for title insurance and escrow services in its sale transactions with Chicago Title Company. Chicago Title agreed to charge RFC only 60% of the standard price for title insurance and a flat rate of $300 for escrow services, regardless of the price of the houses RFC sold.[19](#co_footnote_I81b9cf20d6ee11ea8f41e1f6f2a) As part of the negotiations in a sale to Lane, RFC asked to be permitted to choose the title/escrow company and then selected Chicago Title.[20](#co_footnote_I81b9cf21d6ee11ea8f41e1f6f2a) After the transaction was closed, Lane alleged a violation of RESPA § 2607(a), arguing that the flat rate escrow fee and discounted title insurance rates were a *thing of value* given by Chicago Title in return for RFC’s *referring* home buyers to Chicago Title. He contended that an *agreement to refer* was implied under Reg X § 3500.14(e), which states that “[w]hen a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.”[21](#co_footnote_I81b9cf22d6ee11ea8f41e1f6f2a) The district court concluded, however, that the reduced rates were not connected with referrals but rather were based on the lower costs to Chicago Title in providing title insurance and escrow services resulting from economies of scale and other economic principles extant because of RFC’s experience and standard procedures, and because the properties had recently been taken through foreclosures.[22](#co_footnote_I81b9cf23d6ee11ea8f41e1f6f2a)

The Ninth Circuit Court of Appeals agreed that § 2607 “can reasonably be construed as only prohibiting payments that are *for nothing else than the referral of business*.”[23](#co_footnote_I81b9f630d6ee11ea8f41e1f6f2a) The Ninth Circuit Court considered the earlier Illinois case of *Shah v. Chicago Title and Trust Co.*, in which home buyers had alleged that a title insurance company gave reduced rates to a developer for its title services in exchange for referrals of home purchasers.[24](#co_footnote_I81b9f631d6ee11ea8f41e1f6f2a) The *agreement to refer* allegedly appeared in a written proposal from Chicago Title & Trust “for furnishing title insurance in connection with converting the four existing apartment buildings, consisting of a total of 156 units, to condominium ownership …” It also stated that “(t)itle insurance has been deferred to unit sales on the assumption that we will receive orders for individual units.” The *referral* allegedly was evidenced by a preprinted term in the developer’s standard-form purchase contract which provided that “(p)urchaser hereby designates Chicago Title and Trust Company to furnish title insurance as herein required.” The *things of value* in exchange for referrals allegedly were discounts on title insurance and settlement services for the developer’s land acquisition loan and construction loan, as well as for owner’s title insurance policies the developer provided for its unit purchasers. Plaintiffs also contended that the reduced fees for the developer resulted in unit buyers being charged more for their lender’s policy. The court, however, determined that the agreement between the developer and the title insurance company was not an *agreement to refer*:

We do not believe that this reference to volume indicated in any way that the rates offered to Falcon were dependent upon Falcon’s willingness to refer individual unit purchasers to CT& T. Rather, it is merely a product of Falcon trying to obtain discounted rates based upon the economies of scale which would result from the volume of services which Falcon, itself, would require in connection with the conversion.[25](#co_footnote_I81b9f632d6ee11ea8f41e1f6f2a)

As to *things of value* in exchange for *referrals*, the court concluded that the developer was to receive the lower rates regardless of whether it actually made referrals. Rather than parsing the elements of RESPA and Reg X in isolation, the court focused on the overall business situation and found no evidence of any scheme involving the payment of value in exchange for referrals of business.

The Ninth Circuit Court of Appeals in *Lane* did not approve or disapprove of the *Shah* court’s “economies of scale” test but preferred to base its own decision on a test that HUD devised to help resolve issues involving yield spread premiums. The Ninth Circuit Court concluded that the discounts given to RFC in *Lane* did not violate § 2607(a) because Chicago Title’s total compensation was reasonably related to the value of the services it actually performed. As a professional real estate seller, RFC streamlined the escrow process, plus the title report and legal process in the recent foreclosures reduced [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) burdens, so that Chicago Title’s costs in providing title insurance and settlement services to RFC were lowered significantly.[26](#co_footnote_I81b9f633d6ee11ea8f41e1f6f2a)

The Ninth Circuit Court certainly was correct in holding that discounts do not violate RESPA unless they are *for referrals*. The specific test the court applied came from HUD’s 2001-1 Statement of Policy on yield spread premiums[27](#co_footnote_I81ba1d40d6ee11ea8f41e1f6f2a) and it must be understood a little more broadly when applied in the context of the provision of title services and insurance. The Ninth Circuit Court explained, The HUD test implements section 2607(a) “in a context where the party referring business to a settlement service provider is also providing compensable services to the settlement service provider.”[28](#co_footnote_I81ba1d41d6ee11ea8f41e1f6f2a) In determining whether a “discount” is being given *for referrals*, we should look at the “total compensation” paid to the title insurance company, not only at what that party is paying *for* one particular service. Under this test, a discount on settlement services given to a seller of real estate is not prohibited under section 2607(a) “when: (1) goods and facilities are actually furnished or services are actually performed for the compensation paid, and (2) the discount is reasonably related to the value of the goods or facilities actually furnished or the services actually performed.”[29](#co_footnote_I81ba1d42d6ee11ea8f41e1f6f2a) The seller in *Lane*, however, did not perform any services *for* Chicago Title *per se*. Yet, the seller had either performed or previously paid for many of the escrow and title services that Chicago Title otherwise would have had to perform when it provided escrow services and title insurance in the seller’s unit sales.[30](#co_footnote_I81ba1d43d6ee11ea8f41e1f6f2a) In this context, the Ninth Circuit Court concluded that, although RFC did refer buyers to Chicago Title, the discount that Chicago Title gave RFC on title services and insurance was not for referrals but was reasonably related to the reduced work that Chicago Title performed. The *Lane* court, thus, modeled a commonsense appraisal of the entire business situation. The court added that its decision did not create a “loophole” for volume sellers because where facts do establish that a party is receiving something of value in exchange only for referrals, RESPA will be applied, as it was in *Aiea Lani Corp. v. Hawaii Escrow & Title, Inc*. In that case, the title insurance agent had offered to provide the developer’s construction loan title insurance for an up-front charge of 110% of the standard rate, but to give a credit upon the closing of sales of individual units of a prorated amount of up to 100% of the standard rate.[31](#co_footnote_I81ba1d44d6ee11ea8f41e1f6f2a) This in effect was a 90% discount of the cost of the developer’s construction loan title insurance and was to be given only if the developer’s unit purchasers bought their title insurance from the title insurance agent. The court, therefore, found that an agreement to refer all purchasers clearly was envisioned by the parties.[32](#co_footnote_I81ba1d45d6ee11ea8f41e1f6f2a) The Hawaii Supreme Court held that that agreement to rebate the cost of the developer’s construction loan title insurance in exchange for referrals of home purchasers violated RESPA and was unenforceable.[33](#co_footnote_I81ba4450d6ee11ea8f41e1f6f2a)

HUD includes several express exemptions in Regulation X, intended to prevent normal business conduct from constituting technical violations of RESPA § 2607(a). For example, Reg X exempts an employer’s payment to its own employees for referrals,[34](#co_footnote_I81ba4451d6ee11ea8f41e1f6f2a) though it does not permit a company to pay employees of another company for referrals.[35](#co_footnote_I81ba4452d6ee11ea8f41e1f6f2a) Reg X also exempts the offering of discounts to consumers who purchase a package of multiple settlement services, so long as purchasing the entire package is optional to the purchaser.[36](#co_footnote_I81ba4453d6ee11ea8f41e1f6f2a)

HUD has suggested means by which real estate settlement service providers can give information that home buyers want without appearing to “refer” or “affirmatively influence”[37](#co_footnote_I81ba4454d6ee11ea8f41e1f6f2a) the home buyer’s selection. For example, HUD statements of policy suggest that, when asked for a recommendation, settlement service providers should give a neutral list that ranks other settlement service providers on the basis of some factor relevant to the home buyer’s choice, such as price. Otherwise, it is suggested that providers make multiple lists for settlement services they may be asked to recommend and vary the order of the providers on the lists randomly, so that a particular provider does not appear at the top of a list every time.[38](#co_footnote_I81ba4455d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I81b6e8f1d6ee11ea8f41e1f6f2aa78) | 2 U.S.C.A. § 2607(a). [Galiano v. Fidelity Nat. Title Ins. Co., 684 F.3d 309, 313 (2d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028097256&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_313&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_313); [Fong v. Wells Fargo Bank, N.A, 2013 WL 4760956, \*4 (N.D. Ind. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031488349&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I81b6e8f2d6ee11ea8f41e1f6f2aa78) | 4 C.F.R. § 3500.14(b):  No referral fees. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 3500.14(g)(1). A business entity (whether or not in an affiliate relationship) may not pay any other business entity or the employees of any other business entity for the referral of settlement service business. |
| [3](#co_fnRef_I81b71000d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  Denise Boklach, Esq., contributed to the original version of this chapter with her paper entitled “When Banks Marry Title Insurers, It’s Bad Blood for Borrowers,” written for Title Examination Seminar, University of Oklahoma College of Law, p.35 (May 7, 1993) (copy in author’s possession). Ms. Boklach is an attorney in practice since 1993 with the firm of Skadden, Arps, Slate, Meagher & Flom in their office in Chicago, Illinois. She concentrates in the areas of debt restructuring and bankruptcy. |
| [4](#co_fnRef_I81b71001d6ee11ea8f41e1f6f2aa78) | Harney, The Nation’s Housing—Investigators Report Illegal Kickbacks, Wash. Post, Oct. 24, 1992, at F12. |
| [5](#co_fnRef_I81b71002d6ee11ea8f41e1f6f2aa78) | Harney, The Nation’s Housing—Investigators Report Illegal Kickbacks, Wash. Post, Oct. 24, 1992, at F12. |
| [6](#co_fnRef_I81b71003d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. Dearborn Title Corp., 939 F. Supp. 611 (N.D. Ill. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996194642&pubNum=0000345&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d in part, vacated in part, [118 F.3d 1157, 37 Fed. R. Serv. 3d 1148 (7th Cir. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997140528&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I81b71004d6ee11ea8f41e1f6f2aa78) | Mike Freeman, Possible kickback scheme revealed (Feb. 23, 2005); http://www.signonsandiego.com/news/business/20050223-9999-1b23insure.html; Den. Bus. J. (Feb. 21, 2005) http://denver.bizjournals.com/denver/stories/2005/02/21/daily8.html; Denver Bus. J. (Feb. 14, 2005); http://denver.bizjournals.com/denver/stories/2005/02/14/story2.html.  Also in 2005, Chicago Title Insurance Co. paid HUD $5 million and the Texas Insurance Department $1.2 million for inaccurately reporting settlement costs as part of a scheme to pay kickbacks in violation of RESPA. Chicago Title Fined $5 Million Over Fraud, Chi. Trib., Mar. 1, 2005, at C3. |
| [8](#co_fnRef_I81b84880d6ee11ea8f41e1f6f2aa78) | [Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r, 178 Wash. 2d 120, 130, 309 P.3d 372 (2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031199016&pubNum=0004645&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (applying Washington state law similar to RESPA). |
| [9](#co_fnRef_I81b86f90d6ee11ea8f41e1f6f2aa78) | [24 C.F.R.§ 3500.14(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  Thing of value. This term is broadly defined in section 3(2) of RESPA ([12 U.S.C.A. § 2602(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person’s expenses, or reduction in credit against an existing obligation. The term “payment” is used throughout [§§ 3500.14](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), 1500.15 as synonymous with the giving or receiving any “thing of value” and does not require transfer of money.  *See also* [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (an exchange of a “thing of value” is used as synonymous with a payment and does not require a transfer of money) (citing [24 C.F.R. § 3500.14(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))). |
| [10](#co_fnRef_I81b86f91d6ee11ea8f41e1f6f2aa78) | *See also* Illustration 6 at 24 C.F.R. § 3500 Appendix B. |
| [11](#co_fnRef_I81b86f92d6ee11ea8f41e1f6f2aa78) | Intercounty Title Company of Illinois agreed to pay $1,000,000 to HUD in settlement of an investigation of allegedly improper title insurance payments involving 20,000 home sales in Chicago. *See* Downey, Chicago Title Firm to Pay $1 Million Fine to HUD—Settlement Reached After Two-Year Probe, Wash. Post, Oct. 19, 1991, at E4. Intercounty, an agent for Stewart Title Guaranty Company, denied any wrongdoing and paid the settlement in order to avoid further litigation with HUD.  A 2006 Report of the Washington State Insurance Commissioner “determined that title insurance companies use a series of schemes to influence middlemen to steer business their way, most of which were some version of ‘wining and dining.’ Title companies provided gifts to middlemen; invited them on golf outings, sporting events, and ski trips; hosted parties for them; and underwrote their costs for real estate advertising.” [Blaylock v. First American Title Ins. Co., 504 F. Supp. 2d 1091, 1097 (W.D. Wash. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012920558&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1097&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1097). |
| [12](#co_fnRef_I81b86f93d6ee11ea8f41e1f6f2aa78) | Harney, The Nation’s Housing—HUD Targeting Kickbacks in Home Sales, Wash. Post, Apr. 25, 1992, at E3. |
| [13](#co_fnRef_I81b86f94d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I81b86f95d6ee11ea8f41e1f6f2aa78) | [Barnett v. Chicago Title Ins. Co., 2008 WL 3411684 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016740999&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding no cause of action under either § 2607(a) or § 2607(b) for title insurance company’s charging full rate rather than re-issue rate in plaintiff’s refinance transaction). More cases stating RESPA § 2607(b) is not a rate control statute are discussed *infra* § [21:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a3&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) & [21:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a4&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I81b896a4d6ee11ea8f41e1f6f2aa78) | [Contawe v. Crescent Heights of America, Inc., 2004 WL 2244538 (E.D. Pa. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005239835&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not mentioned, but likely overruled by [Alston v. Countrywide Financial Corp., 585 F.3d 753 (3d Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020228337&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))); [Williams v. First American Title Ins. Co., 2005 WL 2219460 (N.D. Miss. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007290566&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding an overcharge necessary for standing); [Mullinax v. Radian Guar., Inc., 311 F. Supp. 2d 474, 483 (M.D. N.C. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2004293794&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_483&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_483); [Moore v. Radian Group, Inc., 233 F. Supp. 2d 819, 824 (E.D. Tex. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002595792&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_824&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_824), aff’d, [69 Fed. Appx. 659 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003420476&pubNum=0006538&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that HUD has authority under [24 C.F.R. § 3500.14(g)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to “investigate violations of RESPA even if such arrangements cause no actual injury to consumers,” but that a private plaintiff wishing to bring suit under RESPA must first suffer actual injury in the form of inflated settlement charges); [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* §§ [21:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a9&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [21:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a11&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *infra* for further discussion. |
| [16](#co_fnRef_I81b98100d6ee11ea8f41e1f6f2aa78) | [Alston v. Countrywide Financial Corp., 585 F.3d 753 (3d Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020228337&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Edwards v. First American Corp., 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirming in part [Edwards v. First American Corp., 517 F. Supp. 2d 1199, 1202 (C.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013803393&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1202&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1202), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari dismissed as improvidently granted, [132 S.Ct. 2536, 183 L.Ed.2d 611 (June 28, 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [In re Carter, 553 F.3d 979, 989 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017936566&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_989&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_989) (private right of action even where there is no overcharge); [Kahrer v. Ameriquest Mortg. Co., 418 F. Supp. 2d 748 (W.D. Pa. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2008628634&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 277 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_277&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_277). *Accord* [Yates v. All American Abstract Co., 487 F. Supp. 2d 579, 582 (E.D. Pa. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012229283&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_582&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_582) (finding standing without an overcharge); [Robinson v. Fountainhead Title Group Corp., 447 F. Supp. 2d 478, 488–489 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2009728330&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_488&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_488) (finding standing without an overcharge); Patton v. Triad Guar. Ins. Corp., No. CV 100–132 (S.D. Ga. Oct. 10, 2002) (finding standing without an overcharge; unpublished); and [Pedraza v. United Guar. Corp., 114 F. Supp. 2d 1347, 1351 (S.D. Ga. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000462575&pubNum=0004637&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1351&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1351). *See also* [Alexander v. Washington Mut., Inc., 2008 WL 2600323 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016448263&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (filed rate doctrine does not prohibit plaintiffs from bringing suit under RESPA for use of illegal kickback payments); [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 576 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_576&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_576) (the filed rate doctrine prevents plaintiffs from suing under RESPA when they simply think the price they paid for settlement services was unfair; alternatively, the filed rate doctrine does not prevent plaintiffs from suing under RESPA for kickback payments). *See also infra* §§ [21:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a9&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [21:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a11&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and §§ [15:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a12&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [15:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a13&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *infra* for discussion of the filed rate doctrine. |
| [17](#co_fnRef_I81b9a814d6ee11ea8f41e1f6f2aa78) | *See, generally,* Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed., § 2.46 fn 13:  There must be an actual transfer of value. Where referrals are made to a particular provider or even when a provider is designated, no violation occurs if the referral source does not profit in a monetary sense…. Two questions should be asked in determining whether such an arrangement violates RESPA. First, does the provider of services to whom referral is made provide the same type and quality of services performed as other providers in the area? Second, does the provider of services receive a fee reasonably equivalent to the services performed? If the answers to these questions are yes, then the borrower or seller is not being disadvantaged by the referral. Since RESPA’s concern is the abuse of increased cost,… this relationship should not be a violation. |
| [18](#co_fnRef_I81b9a815d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Galiano v. Fidelity Nat. Title Ins. Co., 684 F.3d 309, 313 (2d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028097256&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_313&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_313) (citing Joyce Palomar, 2 Title Insurance Law § 21.2; [Egerer v. Woodland Realty, Inc., 556 F.3d 415, 427 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018125658&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_427); [Fong v. Wells Fargo Bank, N.A, 2013 WL 4760956 (N.D. Ind. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031488349&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (citing Palomar, Title Insurance Law § 21:2); [Jankanish v. First American Title Ins. Co., 2009 WL 779330 (W.D. Wash. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018451123&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Cornelius v. Fidelity Nat. Title Co., 2009 WL 596585 (W.D. Wash. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018306471&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I81b9cf20d6ee11ea8f41e1f6f2aa78) | [2000 WL 1448582 (N.D. Cal. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000553307&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirmed [323 F.3d 739, 742 (C.A.9 (Cal.), 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_742&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_742): “RFC’s standing agreement with Chicago Title provides that RFC will receive title insurance for 60% of Chicago Title’s standard price and RFC’s cost for escrow fees will be a flat $300, regardless of a residence’s sales price. In some cases this fee may be greater than the standard cost, in others less.” |
| [20](#co_fnRef_I81b9cf21d6ee11ea8f41e1f6f2aa78) | Lane, however, had agreed to pay all the closing costs for the transaction, and for the seller’s share was charged only the special rates RFC had negotiated. [Lane v. Residential Funding Corp., 2000 WL 1448582, \*1 (N.D. Cal. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000553307&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [21](#co_fnRef_I81b9cf22d6ee11ea8f41e1f6f2aa78) | On appeal, however, the Ninth Circuit Court of Appeals stated that, Reg X § 3500.14(e) simply does not apply when a defendant can meet the test in HUD’s Statement of Policy 2001-1, which is discussed in the following paragraph of this section. [Lane v. Residential Funding Corp., 323 F.3d 739, 745 (9th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_745&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_745): “When the HUD test is met, any ‘things of value’ a defendant receives are treated as compensation for goods, facilities or services, even if the compensation is not offered in direct exchange for goods, facilities or services.” |
| [22](#co_fnRef_I81b9cf23d6ee11ea8f41e1f6f2aa78) | [Lane v. Residential Funding Corp., 2000 WL 1448582, \*6 (N.D. Cal. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000553307&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [23](#co_fnRef_I81b9f630d6ee11ea8f41e1f6f2aa78) | [2000 WL 1448582 (N.D. Cal. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000553307&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affirmed [323 F.3d 739 (C.A.9 (Cal.), 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [24](#co_fnRef_I81b9f631d6ee11ea8f41e1f6f2aa78) | [Shah v. Chicago Title and Trust Co., 102 Ill. App. 3d 787, 58 Ill. Dec. 400, 430 N.E.2d 342, 401 (1st Dist. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981153565&pubNum=0000578&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_578_401&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_578_401). |
| [25](#co_fnRef_I81b9f632d6ee11ea8f41e1f6f2aa78) | [Shah v. Chicago Title and Trust Co., 102 Ill. App. 3d 787, 58 Ill. Dec. 400, 430 N.E.2d 342, 401 (1st Dist. 1981)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1981153565&pubNum=0000578&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_578_401&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_578_401). |
| [26](#co_fnRef_I81b9f633d6ee11ea8f41e1f6f2aa78) | [323 F.3d 739, 745 (C.A.9 (Cal.), 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_745&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_745). |
| [27](#co_fnRef_I81ba1d40d6ee11ea8f41e1f6f2aa78) | [Lane v. Residential Funding Corp., 323 F.3d 739 (9th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See* RESPA [Statement of Policy 2001-1, 66 Fed. Reg. 53,052, 53,054, 53,055 (Oct. 18, 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0286588687&pubNum=0001037&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_53054&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_53054). *See also* [Fong v. Wells Fargo Bank, N.A, 2013 WL 4760956, \*5 (N.D. Ind. 2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031488349&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [28](#co_fnRef_I81ba1d41d6ee11ea8f41e1f6f2aa78) | [Lane v. Residential Funding Corp., 323 F.3d 739 (9th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing HUD, RESPA Statement of Policy 2001-1 (Oct. 18, 2001). |
| [29](#co_fnRef_I81ba1d42d6ee11ea8f41e1f6f2aa78) | [323 F.3d 739, 742, 743 (C.A.9 (Cal.), 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_742&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_742). |
| [30](#co_fnRef_I81ba1d43d6ee11ea8f41e1f6f2aa78) | [323 F.3d 739, 742, 743 (C.A.9 (Cal.), 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003212382&pubNum=0000506&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_742&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_742). As described in the preceding paragraph, RFC used standardized procedures and forms, plus Chicago Title could use the title report or trustee sale guarantee issued in the recent foreclosure proceeding in lieu of a completely new title search. |
| [31](#co_fnRef_I81ba1d44d6ee11ea8f41e1f6f2aa78) | The letter from the title insurance agency to the developer said:  Pursuant to our verbal conversation of November 19, 1973, this is to confirm our Title Insurance fees. For and in consideration of a cash advance of $7,498.90 (which represents 110% of the standard rate), payable within 30 days from the issuance of our ALTA Construction Loan Policy of $3,100,000. Our premium charge is $724.90, the balance of $6,774 owing you will be payable upon the closing of all the individual escrows for Aiea Lani Estates. This will reflect as a credit of $112.90 on the Sellers Closing Statement. In short, your cost is $724.90 for the ALTA policy.  [Aiea Lani Corp. v. Hawaii Escrow & Title, Inc., 64 Haw. 638, 647 P.2d 257, 258 (1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982129317&pubNum=0000661&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_258&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_258). |
| [32](#co_fnRef_I81ba1d45d6ee11ea8f41e1f6f2aa78) | [Aiea Lani Corp. v. Hawaii Escrow & Title, Inc., 64 Haw. 638, 647 P.2d 257, 262 (1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982129317&pubNum=0000661&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_262&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_262). |
| [33](#co_fnRef_I81ba4450d6ee11ea8f41e1f6f2aa78) | [Aiea Lani Corp. v. Hawaii Escrow & Title, Inc., 64 Haw. 638, 647 P.2d 257 (1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982129317&pubNum=0000661&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [34](#co_fnRef_I81ba4451d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(g)(1)(vii)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See generally* [McCullough v. Howard Hanna Co., 2010 WL 1258112 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021677016&pubNum=0000999&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [35](#co_fnRef_I81ba4452d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [36](#co_fnRef_I81ba4453d6ee11ea8f41e1f6f2aa78) | Reg X, [24 C.F.R. § 3500.2(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“[T]he offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.”). |
| [37](#co_fnRef_I81ba4454d6ee11ea8f41e1f6f2aa78) | Reg X defines referral as “any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service …” [24 C.F.R. § 3500.14(f)(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5886fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [38](#co_fnRef_I81ba4455d6ee11ea8f41e1f6f2aa78) | Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed., § 2.48. |

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2 Title Ins. Law § 21:3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:3. No unearned fees under RESPA § 2607(b)

RESPA § 2607(b) expressly prohibits splits with another party of settlement service fees that a home buyer or seller pays, unless that party actually rendered some services.[1](#co_footnote_I81cb0d30d6ee11ea8f41e1f6f2a) To encompass disguised payments like those described in the preceding section of this chapter, [**Reg X**](http://practicallawconnect.thomsonreuters.com/Document/I8d74ec31ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) adds that *any charge* by a person for which no or “nominal” services are performed or for which “duplicative fees” are charged is an unearned fee and a violation of RESPA.[2](#co_footnote_I81cb0d31d6ee11ea8f41e1f6f2a) In the context of title insurance, a title insurance agent or underwriter cannot share the fees that it receives for title services and insurance with another party unless that party actually provided some of the title services. For example, a title insurance company cannot split part of the title insurance premium with an attorney, real estate broker, or lender for sending the title insurer business.[3](#co_footnote_I81cb0d32d6ee11ea8f41e1f6f2a) Similarly, a title agent or title insurance company cannot receive payments that are not for title services or insurance actually provided. HUD will assume that payments by a title insurance underwriter to a title agent, including an attorney-agent, are really for referrals unless the agent actually performed “core title agent services.” If a title insurance agent does perform core title agent services, then the agent’s commission from the title insurance company will fall within RESPA’s [§ 2607(c)(1)(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) exemption for payments by a title insurer “to its duly appointed agent for services actually performed in the issuance of a policy of title insurance.” Reg X defines “core title agent services” as:[4](#co_footnote_I81cb0d33d6ee11ea8f41e1f6f2a)

1. (1) evaluating the title search to determine insurability of the title;
2. (2) clearing title defects noted as exceptions to the policy;
3. (3) issuing the policy;
4. (4) issuing the commitment for title insurance, where customary; and
5. (5) conducting the title search and the closing.

The core title agent services must be performed by the title agent paid the commission and the title agent’s employees; they cannot be “contracted out” to third parties, including the title insurance underwriter. To be entitled to receive compensation for these services, the title agent also must bear liability for each service.[5](#co_footnote_I81cb3440d6ee11ea8f41e1f6f2a)

If payments made by a title insurance company to another party in the real estate settlement process exceed the reasonable market value of services rendered, HUD will assume that the excess payment actually was an unlawful referral fee.[6](#co_footnote_I81cb3441d6ee11ea8f41e1f6f2a) Conversely, a reasonable relationship between the payments and the value of the services received establishes that RESPA was not violated.[7](#co_footnote_I81cb3442d6ee11ea8f41e1f6f2a)

Payments to persons who have more than one role in a transaction, such as attorneys or brokers who also are title insurance agents, may be subject to scrutiny. In order to be compensated for their role as title insurance agent, these persons must perform services as agent that are actual, necessary, and distinct from their primary services.[8](#co_footnote_I81cb5b51d6ee11ea8f41e1f6f2a) For example, for an attorney of the buyer to also receive compensation as a title insurance agent, the attorney must perform core title agent services that are separate from the services that she performs and charges for as an attorney.[9](#co_footnote_I81cb5b52d6ee11ea8f41e1f6f2a)

In Reg X, HUD gives both an illustration of acts that do not warrant a fee because they are not core title agent services and an illustration of unlawful duplicative charges to the home buyer for the same title services.[10](#co_footnote_I81cb5b53d6ee11ea8f41e1f6f2a) Illustration 3 in Appendix B of Reg X shows that merely placing a home buyer’s order for title insurance is insufficient to entitle a party to a fee. Any fee given, therefore, is assumed to be a fee for the referral of the home buyer to the title insurance company. Illustration 4 clarifies that an attorney/agent may not receive a commission from the title insurance underwriter for the issuance of a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) unless the attorney actually provides the core title agent services listed above and assumes liability for them. Neither can an attorney/agent receive a commission from the title insurer for these services and then also bill her clients for these services. HUD would consider that the attorney was already paid for the service by the client, and that the commission was a disguised referral fee or unearned fee split from the title insurance company.[11](#co_footnote_I81cb5b54d6ee11ea8f41e1f6f2a)

Even with Reg X’s clarifications, members of the title insurance industry voiced questions about the level of services title agents must perform to avoid an assumption that their fee was a disguised referral fee or fee split. Will a title agent’s signing a policy issued by the underwriter be deemed a “nominal” service for which the agent is not entitled to be compensated, even though the agent’s signature makes the agent liable to the underwriter for errors or omissions pursuant to their agency agreement? How will it be determined whether a fee purportedly charged for a particular service is higher than the service warranted? Where the agent performs fewer than all the core title agent services, is it sufficient if the agent’s charges reflect a meaningful reduction from the commissions paid to agents who perform all core title agent services? If a state regulates the rates title insurers charge for particular services and policies, will HUD accept the rates as reasonable per se?[12](#co_footnote_I81cb5b55d6ee11ea8f41e1f6f2a) What if rates are only filed with the state regulatory agency, but the agency does not affirmatively approve them? If a title agent only updates the [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) from the date of its own or another company’s recently issued title insurance policy on the same property, is it improper for the agent to be paid the same commission as an agent who performs a title search from inception of title? Can a title agent charge a fee for reviewing an attorney’s report before issuing a title policy in a state where the law mandates that an attorney must perform the title examination?[13](#co_footnote_I81cb8260d6ee11ea8f41e1f6f2a) The [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) argued that once it is determined that an agent performed core title agent services, the amount of the commission paid to the agent should not be subject to challenge and should fall within the [§ 2607(c)(1)(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) exemption.

In September 1996, HUD did issue Statement of Policy 1996-4[14](#co_footnote_I81cb8261d6ee11ea8f41e1f6f2a) advising that if a title insurance company and agent qualifies for the exemption in [§ 2607(c)(1)(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—for payments for core title agent services actually performed in the issuance of a policy—then HUD normally will not scrutinize the payments. If, instead, a title insurance company’s payments to an agent fall under [§ 2607(c)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))—“salary or compensation or other payment for goods or facilities actually furnished or for services actually performed”—then HUD may examine the payments to the title insurance agent to determine if they are reasonably related to the services performed.[15](#co_footnote_I81cb8262d6ee11ea8f41e1f6f2a)

HUD Policy Statement 1996-4 also further defined “core title agent services” in the particular context of Florida’s bar-related title assurance organizations.[16](#co_footnote_I81cb8263d6ee11ea8f41e1f6f2a) In Florida, title insurance agents commonly receive 70% of the policy premium. HUD expects that the proportion of the premium given the title agent should correlate with the proportion of title work done by the agent compared to that of the underwriter for a title insurance policy. HUD’s Policy Statement 1996-4 specifies that to establish performance of the core title agent service of “evaluating the title search to determine insurability of the title,” it is not enough for an agent merely to examine a “[**pro forma**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a1427ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) title insurance commitment,” in which someone else has made legal or underwriting determinations regarding removal of defects in title and matters to be included and excluded in any title policy to be issued. Instead, the agent must actually evaluate or examine the actual documents or summaries of documents from the public records relevant to the history and current condition of any title to be insured.[17](#co_footnote_I81cba971d6ee11ea8f41e1f6f2a)

In addition, to be credited by HUD with performing “core title agent services,” the title insurance agent cannot regularly contract them out, though doing so temporarily in busy periods is acceptable if the party performing them is not affiliated with the title insurance company paying the agent. Neither may the title insurance company supply the agent’s employees or direct their work nor provide the agent with document preparation services or title evidence from its title plant, unless the company charges fees sufficient to cover its costs. If the title insurance company charges less than its costs, HUD assumes that it is giving a thing of value in exchange for referrals. Further, the title insurance company may only provide advice and assistance to the agent on particular questions on a case-by-case basis.

A party who does not meet the test for core title agent services under RESPA [§ 2607(c)(1)(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) can be paid for the services it does perform under RESPA [§ 2607(c)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), but HUD then may scrutinize the amount of the payments, including any portion of the policy premium paid, to ascertain that it is not a split of the premium in exchange only for referrals. For example, where a title insurance company provides some of the title examination or other core title agent functions, then HUD may scrutinize the share of the premium the purported agent retained, as well as any other compensation from the insurer, to ascertain that there is a meaningful reduction compared to the compensation paid to agents who perform all core title services. “The level of such reduction in compensation must be reasonably commensurate with the reduced level of responsibilities assumed by such person for the services provided and the underwriting risks taken.”[18](#co_footnote_I81cba972d6ee11ea8f41e1f6f2a) HUD specifically notes that it will be difficult to justify the payment of a significant portion of the title insurance premium to a title insurance agent who fails to take responsibility for the title examination function.

It may be questioned whether flat fees and fees based on a percentage of the real estate purchase price are reasonably related to the value of the services provided. One commentator gives the example of a lawyer who refers clients to a particular title agent, which then has the lawyer do all the title work and pays the lawyer a fee based on a percentage of the title insurance premium. He says that “to the extent that the services rendered in that particular case do not reasonably relate to the fee paid, it can be argued that the excess is a payment for the referral.”[19](#co_footnote_I81cba973d6ee11ea8f41e1f6f2a) He concludes, however, that “so long as the title company pays the same percentage fee to all lawyers performing reasonably equivalent services, this practice should not necessarily be a violation.”[20](#co_footnote_I81cba974d6ee11ea8f41e1f6f2a) Given the low fees that attorneys earn for their time in residential real estate transactions, it should be rare for a fee that is a percentage of the title insurance premium to exceed the reasonable value of the attorney’s time and services.

National averages are not necessarily evidence of reasonable fees. In a case involving yield spread premiums, the plaintiff had offered national averages as a “baseline” for determining reasonable fees. The court responded that “if Congress rejected a ratemaking role for itself and for HUD, it is inconceivable that it intended such a role for the federal judiciary.”[21](#co_footnote_I81cba975d6ee11ea8f41e1f6f2a) The court, therefore, held that whether a charge is reasonable “should not be determined by looking for some platonic form of reasonableness inherent in national averages,” but instead by “looking to the processes that resulted in the payment of the particular fee. If arms-length bargaining … set the payment for the … services, the payment is reasonable enough within the meaning of RESPA … RESPA sets processes, not prices.”[22](#co_footnote_I81cbd080d6ee11ea8f41e1f6f2a)

Also on grounds that RESPA [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) is not about setting prices,[23](#co_footnote_I81cbd081d6ee11ea8f41e1f6f2a) in lawsuits alleging a title insurer wrongly charged a full title insurance premium instead of the re-issue rate or refinance rate, most courts have held no cause of action exists under RESPA [§ 2607(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[24](#co_footnote_I81cbd082d6ee11ea8f41e1f6f2a)

[Section 21:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a4&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) will consider the separate issue of a settlement service provider who performs no service marking up a third party’s settlement service charge and retaining the difference.

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| **Footnotes** | |
| [1](#co_fnRef_I81cb0d30d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See generally* [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2036, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2036&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2036). |
| [2](#co_fnRef_I81cb0d31d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I81cb0d32d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(g)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I81cb0d33d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(g)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). HUD’s [RESPA Statement of Policy 1996-4, 61 Fed. Reg. 49398 to 49400 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106706385&pubNum=0001037&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_49400&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_49400) suggests the fifth service also is intended to be modified by the phrase “where customary” and further defines “core title services” in the context of Florida practice as follows:   1. (a) The examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence (as defined below) to determine the insurability of the title being examined, and what items to include and/or exclude in any title commitment and policy to be issued. 2. (b) The preparation and issuance of the title commitment, or other document, that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met. 3. (c) The clearance of underwriting objections and the taking of those steps that are needed to satisfy any conditions to the issuance of the policies. 4. (d) The preparation and issuance of the policy or policies of title insurance. 5. (e) The handling of the closing or settlement, when it is customary for title insurance agents to provide such services and when the agent’s compensation for such services is customarily part of the payment or retention from the insurer. |
| [5](#co_fnRef_I81cb3440d6ee11ea8f41e1f6f2aa78) | HUD, RESPA Statement of Policy 1996-4, [61 Fed. Reg. 49-398](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=0001037&cite=61FR49&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to 49,400 (1996): “In considering liability, HUD will examine the following type of indicia: the provisions of the agency contract, whether the agent has errors and omissions insurance or malpractice insurance, whether a contract provision regarding an agent’s liability for a loss is ever enforced, whether an agent is financially liable to pay a claim, and other factors the Secretary may consider relevant.” |
| [6](#co_fnRef_I81cb3441d6ee11ea8f41e1f6f2aa78) | *See* [24 C.F.R. § 3500.14(g)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and 24 C.F.R. § 3500 Appendix B, Illustrations 3, 4. |
| [7](#co_fnRef_I81cb3442d6ee11ea8f41e1f6f2aa78) | *See* discussion of this holding in the context of RESPA [§ 2607(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in [§ 21:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a2&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *supra*. |
| [8](#co_fnRef_I81cb5b51d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(g)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I81cb5b52d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(g)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I81cb5b53d6ee11ea8f41e1f6f2aa78) | 24 C.F.R. § 3500 Appendix B, Illustrations 3, 4. |
| [11](#co_fnRef_I81cb5b54d6ee11ea8f41e1f6f2aa78) | 24 C.F.R. § 3500 Appendix B, Illustration 4. *See also* RESPA Statement of Policy 1996-4, Part D, [61 Fed. Reg. 49398 to 49400 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106706385&pubNum=0001037&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_49400&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_49400): “if an attorney is representing a consumer in a home purchase and also acting as a title insurance agent, he or she may not receive duplicate fees for the same work.” |
| [12](#co_fnRef_I81cb5b55d6ee11ea8f41e1f6f2aa78) | *See also* discussion of this issue *infra* [§ 21:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a11&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I81cb8260d6ee11ea8f41e1f6f2aa78) | Many of the questions were raised in ALTA Position Regarding Revised RESPA Regulations, 72 Title News, 21, 22 (1993). |
| [14](#co_fnRef_I81cb8261d6ee11ea8f41e1f6f2aa78) | [RESPA Statement of Policy 1996-4, 61 Fed. Reg. 49398 to 49400 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106706385&pubNum=0001037&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_49400&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_49400). |
| [15](#co_fnRef_I81cb8262d6ee11ea8f41e1f6f2aa78) | [RESPA Statement of Policy 1996-4, 61 Fed. Reg. 49398 to 49400 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106706385&pubNum=0001037&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_49400&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_49400) also more clearly defined “core title services,” particularly in the context of Florida practice where HUD had held recent investigations:   1. (a) The examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence (as defined below) to determine the insurability of the title being examined and what items to include and/or exclude in any title commitment and policy to be issued. 2. (b) The preparation and issuance of the title commitment, or other document, that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued and obligates the insurer to issue a policy of title insurance if such conditions are met. 3. (c) The clearance of underwriting objections and the taking of those steps that are needed to satisfy any conditions to the issuance of the policies. 4. (d) The preparation and issuance of the policy or policies of title insurance. 5. (e) The handling of the closing or settlement, when it is customary for title insurance agents to provide such services and when the agent’s compensation for such services is customarily part of the payment or retention from the insurer. |
| [16](#co_fnRef_I81cb8263d6ee11ea8f41e1f6f2aa78) | *See* [§§ 2:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a1&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discusses bar-related title assurance organizations. |
| [17](#co_fnRef_I81cba971d6ee11ea8f41e1f6f2aa78) | [HUD, RESPA Statement of Policy 1996-4, 61 Fed. Reg. 49398 to 49400 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106706385&pubNum=0001037&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_49400&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_49400). |
| [18](#co_fnRef_I81cba972d6ee11ea8f41e1f6f2aa78) | [HUD, RESPA Statement of Policy 1996-4, Part C., 61 Fed. Reg. 49398 to 49400 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106706385&pubNum=0001037&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_49400&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_49400). |
| [19](#co_fnRef_I81cba973d6ee11ea8f41e1f6f2aa78) | Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed., § 2.49. |
| [20](#co_fnRef_I81cba974d6ee11ea8f41e1f6f2aa78) | Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed., § 2.49. |
| [21](#co_fnRef_I81cba975d6ee11ea8f41e1f6f2aa78) | [Barbosa v. Target Mortg. Corp., 968 F. Supp. 1548, 1562 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997137191&pubNum=0000345&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1562&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1562). |
| [22](#co_fnRef_I81cbd080d6ee11ea8f41e1f6f2aa78) | [Barbosa v. Target Mortg. Corp., 968 F. Supp. 1548, 1562 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997137191&pubNum=0000345&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1562&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1562). *See also* [Hastings v. Fidelity Mortg. Decisions Corp., 984 F. Supp. 600, R.I.C.O. Bus. Disp. Guide (CCH) P 9373 (N.D. Ill. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997217147&pubNum=0000345&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [23](#co_fnRef_I81cbd081d6ee11ea8f41e1f6f2aa78) | *See e.g.*, [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2038, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2038&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2038); [Galiano v. Fidelity Nat. Title Ins. Co., 684 F.3d 309, 314 (2d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2028097256&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_314&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_314) (RESPA … “is not a price-control statute.”); [Arthur v. Ticor Title Ins. Co. of Florida, 569 F.3d 154 (4th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019157964&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Moody v. Commonwealth Land Title Ins. Co., 284 Fed. Appx. 735 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016454653&pubNum=0006538&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hazewood v. Foundation Financial Group, LLC, 551 F.3d 1223 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017665748&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Friedman v. Market Street Mortg. Corp., 520 F.3d 1289, 1291 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015533154&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1291&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1291); [Santiago v. GMAC Mortg. Group, Inc., 417 F.3d 384, 388 (3d Cir. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007082932&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_388&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_388) (explaining that RESPA is not a price control statute and does not allow a cause of action for overcharges, though it does allow a cause of action for markups); [Kruse v. Wells Fargo Home Mortg., Inc., 383 F.3d 49 (2d Cir. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005045729&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (so long as overcharge is for services actually rendered it is not prohibited by RESPA); [Krzalic v. Republic Title Co., 314 F.3d 875, 881 (7th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002799886&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_881&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_881); [Boulware v. Crossland Mortg. Corp., 291 F.3d 261, 268 (4th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002323184&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_268&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_268); [Hargis v. U.S. Bancorp, 2010 WL 2978100 (E.D. Mo. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022653379&pubNum=0000999&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Barnett v. Chicago Title Ins. Co., 2008 WL 3411684 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016740999&pubNum=0000999&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [24](#co_fnRef_I81cbd082d6ee11ea8f41e1f6f2aa78) | [Martinez v. Wells Fargo Home Mortg., Inc., 598 F.3d 549 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021504342&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Arthur v. Ticor Title Ins. Co. of Florida, 569 F.3d 154 (4th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019157964&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hazewood v. Foundation Financial Group, LLC, 551 F.3d 1223 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017665748&pubNum=0000506&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Moody v. Commonwealth Land Title Ins. Co., 284 Fed. Appx. 735 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016454653&pubNum=0006538&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hancock v. Chicago Title Ins. Co., 635 F. Supp. 2d 539 (N.D. Tex. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019361650&pubNum=0004637&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kingsberry v. Chicago Title Ins. Co., 586 F. Supp. 2d 1242 (W.D. Wash. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017270599&pubNum=0004637&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), amended in part on other grounds, [586 F. Supp. 2d 1248 (W.D. Wash. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017451893&pubNum=0004637&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Barnett v. Chicago Title Ins. Co., 2008 WL 3411684 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016740999&pubNum=0000999&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Patino v. Lawyers Title Ins. Corp., 2007 WL 4687748 (N.D. Tex. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014701266&pubNum=0000999&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Williams v. Saxon Mortg. Services, Inc., 2007 WL 1845642 (S.D. Ala. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012566032&pubNum=0000999&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Morrisette v. NovaStar Home Mortg., Inc., 484 F. Supp. 2d 1227 (S.D. Ala. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012087865&pubNum=0004637&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [284 Fed. Appx. 729 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016454490&pubNum=0006538&originatingDoc=If4f5d58b6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 21:4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:4. No unearned fees under RESPA § 2607(b)—Markups of one provider’s charges by another provider

While it is clear that RESPA § 2607(b) applies to payments made by one settlement service provider to another settlement service provider that were not for services actually performed, issues on which HUD and some courts have disagreed are whether RESPA § 2607(b) prohibits one settlement service provider from (1) marking up another provider’s fees and keeping the difference, or (2) charging consumers high fees.

[**Reg X**](http://practicallawconnect.thomsonreuters.com/Document/I8d74ec31ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) § 3500.14(c) says, “A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section.” Also, Reg X § 3500.14(g)(2) states that high prices may be investigated to see if they are the result of the split of a fee. Reg X § 3500.14(g)(3) states further that “When a person in a position to refer settlement service business … receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person.”

HUD’s interpretation set forth in several policy statements has been that § 2607(b) not only bars one settlement service provider from receiving an unearned fee from another provider, but it also bars a single settlement service provider from charging consumers unearned or excessive fees. HUD has contended that this includes one settlement service provider charging consumers more for a service than is charged by the third party who actually performs the service, and retaining an unearned fee out of the consumer’s payment. In the context of title insurance specifically, in its Statement of Policy 1996-4, HUD said “If a title insurance agent obtains third party services, such as the provision of title evidence, and does not add any additional value to the service provided by the third party, but increases the charge to the consumer for that service and retains the difference, then HUD views the amount that the person retains as an unearned fee in violation of” 2607(b) of RESPA.[1](#co_footnote_I81dc4b40d6ee11ea8f41e1f6f2a) HUD’s RESPA Statement of Policy 2001-1 also opined that overcharges for settlement services by one party violate RESPA.[2](#co_footnote_I81dc4b41d6ee11ea8f41e1f6f2a) HUD argued that this was the same as accepting a portion of a charge for other than services actually performed.

Payments that are unearned fees for settlement services occur in, but are not limited to, cases where: (1) two or more persons split a fee for settlement services, any portion of which is unearned; or (2) one settlement service provider marks-up the cost of the services performed or goods provided by another settlement service provider without providing additional actual, necessary, and distinct services, goods, or facilities to justify the additional charge; or (3) one settlement service provider charges the consumer a fee where no, nominal, or duplicative work is done, or the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed. In the first situation, two settlement service providers split or share a fee charged to a consumer and at least part, if not all, of at least one provider’s share of the fee is unearned. In the second situation, a settlement service provider charges a fee to a consumer for another provider’s services that is higher than the actual price of such services, and keeps the difference without performing any actual, necessary, and distinct services to justify the additional charge. In the third situation, one settlement service provider charges a fee to a consumer where no work is done or the fee exceeds the reasonable value of the services performed by that provider, and for this reason the fee or any portion thereof for which services are not performed is unearned.

HUD regards all of these situations as legally indistinguishable, in that they involve payments for settlement services where all or a portion of the fees are unearned and, thus, are violative of the statute. HUD, therefore, specifically interprets Section 8(b) as not being limited to situations where at least two persons split or share an unearned fee for the provision to be violated.[3](#co_footnote_I81dc4b42d6ee11ea8f41e1f6f2a)

The Circuit Courts of Appeal generally agreed that the first two sets of facts in the preceding HUD quotation violate RESPA, but disagreed on whether RESPA applies when one provider alone marks-up another’s fee or when one provider charges an excessive fee for a service it provided until the U.S. Supreme Court settled the question in 2012.[4](#co_footnote_I81dc4b43d6ee11ea8f41e1f6f2a)

The Seventh Circuit Court of Appeals’ opinion directly involved title insurance companies. In *Krzalic v. Republic Title Co.*,[5](#co_footnote_I81dc7250d6ee11ea8f41e1f6f2a) the Seventh Circuit Court of Appeals confirmed the position it had taken in both *Echevarria v. Chicago Title & Trust Co.*,[6](#co_footnote_I81dc7251d6ee11ea8f41e1f6f2a) and *Durr v. Intercounty Title Co. of Illinois*,[7](#co_footnote_I81dc7252d6ee11ea8f41e1f6f2a) that § 2067(b) is an anti-kickback law, not a rate regulation, and therefore could not apply to overcharging by a single real estate settlement service provider.[8](#co_footnote_I81dc7253d6ee11ea8f41e1f6f2a) HUD had issued its 2001-1 Statement of Policy after publication of the Seventh Circuit Court’s opinion in *Echevarria*, in response to the following qualification in the court’s holding: “Absent a formal commitment by HUD to an opposing position, we decline to overrule our established RESPA sec. [2067](b) case law.”[9](#co_footnote_I81dc9960d6ee11ea8f41e1f6f2a) HUD intended its 2001-1 Policy Statement to supply that formal opposing position. Despite acknowledging that some deference is due to the interpretation of a federal statute by the federal agency charged with administering it,[10](#co_footnote_I81dc9961d6ee11ea8f41e1f6f2a) the Seventh Circuit Court of Appeals subsequently held in *Krzalic v. Republic Title Co.*, that § 2607(b) “will not bear, as a matter of straightforward judicial interpretation … the meaning that HUD wants to give it.”[11](#co_footnote_I81dc9962d6ee11ea8f41e1f6f2a)

Republic Title did not “accept any portion, split, or percentage of any charge.” No one agreed to divide a receipt with Republic. The statutory language describes a situation in which *A* charges *B* (the borrower) a fee of some sort, collects it, and then either splits it with *C* or gives *C* a portion or percentage (other than 50 percent—the situation that the statutory term “split” most naturally describes) of it. *A* might be a lawyer, and *C* a closing agent like Republic Title, and *A* might charge a legal fee to *B* and kick back a share of it to *C* for recommending to the borrower that he use *A’s* services. That would be a form of commercial bribery and is the target of section 8(b). Republic, however, received no part of a fee charged by someone else.[12](#co_footnote_I81dcc070d6ee11ea8f41e1f6f2a)

Therefore, the court held that even if overpricing a settlement service is an abuse, it is not an abuse to which RESPA applies.[13](#co_footnote_I81dcc071d6ee11ea8f41e1f6f2a) In 2003, the U.S. Supreme Court denied a Petition for Certiorari in *Krzalic v. Republic Title Co.*[14](#co_footnote_I81dcc072d6ee11ea8f41e1f6f2a) In 2010, a Petition for Certiorari again was filed to resolve the disagreement among the Circuit Courts of Appeals on whether § 2607(b) of RESPA prohibits a real estate settlement services provider from charging an unearned fee only if the fee is divided between two or more parties.[15](#co_footnote_I81dcc073d6ee11ea8f41e1f6f2a) In 2012, the United States Supreme Court held in *Freeman v. Quicken Loans, Inc.*, that RESPA does not prohibit a single settlement service provider’s retaining an unearned fee, but only covers a provider’s splitting of a fee with at least one other provider.[16](#co_footnote_I81dcc074d6ee11ea8f41e1f6f2a) The Court specified that, “to establish a violation of § 2607(b), a plaintiff must demonstrate that a charge for settlement services was divided between two or more persons.”[17](#co_footnote_I81dcc075d6ee11ea8f41e1f6f2a) The court explained that plaintiffs’ “reading —that a settlement-service provider can ‘make’ a charge and then ‘accept’ the portion of the charge consisting of 100 percent — does not avoid collapsing the sequential relationship of the two stages and would destroy the tandem character of activities that the text envisions at stage two (*i.e.*, a giving and accepting).”[18](#co_footnote_I81dce780d6ee11ea8f41e1f6f2a)

Under HUD’s interpretation, the party whose fee was marked up might have been alleged to be involved in the “fee split” in addition to the party who marked up the fee. For example, if A is settlement agent and collects from the home buyer a $300 appraisal fee and then forwards only $200 to pay the appraiser’s, B’s, actual fee, A has retained an “unearned” fee, but B did perform services for the fee B received. Is B also liable if B did not know that A marked up its fee? As a second example, what if B charges a $200 appraisal fee that A collects as settlement agent, and A separately charges a $100 fee for providing the appraisal, unbeknownst to B? The U.S. Supreme Court in *Freeman v. Quicken Loans, Inc.*, gave a similar example and clearly rejected the possibility that a party such as B could be liable in these situations. The U.S. Supreme Court’s holding in *Freeman v. Quicken Loans, Inc.* affirmed the Seventh Circuit Court of Appeals’ holdings in both *Krzalic v. Republic Title Co.*,[19](#co_footnote_I81dce781d6ee11ea8f41e1f6f2a) and *Echevarria v. Chicago Title & Trust Co.*,[20](#co_footnote_I81dce782d6ee11ea8f41e1f6f2a) regarding title companies’ markup of recording fees. The title companies were responsible for recording the purchasers’ deeds and mortgages. The title companies collected a fee that was greater than the cost of the actual recording fees and retained the difference. The plaintiffs did not allege that county recorders were charging a higher amount than necessary through the title agencies and then paying the extra to the title agencies for referrals to the recorders. As the preceding paragraph describes, the courts therefore found no RESPA violation at all, because the title companies’ “unearned fee” was not a kickback or fee split between two settlement service providers. The facts in HUD’s second example appeared in *Christakos v. Intercounty Title Co.*, where the title agency had charged for recording a mortgage release, though that service was performed by the prior lender and the borrower had paid the prior lender a release fee as well.[21](#co_footnote_I81dce783d6ee11ea8f41e1f6f2a) The prior lender was not alleged to be liable,[22](#co_footnote_I81dce784d6ee11ea8f41e1f6f2a) but the court had refused to dismiss the action under § 2607(b). The court had stated that though there needed to be two parties involved for an unlawful “fee split,” the plaintiffs’ allegations of that the title agency and prior lender split the fee for release of the mortgage stated a cause of action under RESPA § 2607(b).

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| **Footnotes** | |
| [1](#co_fnRef_I81dc4b40d6ee11ea8f41e1f6f2aa78) | [HUD, RESPA Statement of Policy 1996-4, Part D, 61 Fed. Reg. 49,398 to 49,400 (1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106706385&pubNum=0001037&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=FR&fi=co_pp_sp_1037_49400&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_1037_49400). |
| [2](#co_fnRef_I81dc4b41d6ee11ea8f41e1f6f2aa78) | HUD, RESPA Statement of Policy 2001-1, Part C, [66 Fed. Reg. 53,052 (Oct. 18, 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0286588687&pubNum=0001037&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* discussion of HUD’s 2001 Policy Statement in [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2038, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2038&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2038). |
| [3](#co_fnRef_I81dc4b42d6ee11ea8f41e1f6f2aa78) | HUD, RESPA Statement of Policy 2001-1, Part C, [66 Fed. Reg. 53,052 (Oct. 18, 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0286588687&pubNum=0001037&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I81dc4b43d6ee11ea8f41e1f6f2aa78) | [Cohen v. JP Morgan Chase & Co., 498 F.3d 111, 113 (2d Cir. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012853233&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_113&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_113); [Kruse v. Wells Fargo Home Mortg., Inc., 383 F.3d 49 (2d Cir. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005045729&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Tubbs v. North American Title Agency, Inc., 389 Fed. Appx. 104 (3d Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022698995&pubNum=0006538&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not published in West’s Federal Reporter); [Santiago v. GMAC Mortg. Group, Inc., 417 F.3d 384 (3d Cir. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007082932&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Arthur v. Ticor Title Ins. Co. of Florida, 569 F.3d 154 (4th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2019157964&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (§ 2607(b) does not prohibit charging too much for services actually performed; an allegation that services were not performed is necessary); [Boulware v. Crossland Mortg. Corp., 291 F.3d 261 (4th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002323184&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Weizeorick v. ABN AMRO Mortg. Group, Inc., 337 F.3d 827, 830 (7th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003513976&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_830&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_830); [Krzalic v. Republic Title Co., 314 F.3d 875, 877 (7th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002799886&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_877&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_877); [Echevarria v. Chicago Title & Trust Co., 256 F.3d 623 (7th Cir. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001565654&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Martinez v. Wells Fargo Home Mortg., Inc., 598 F.3d 549 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021504342&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Friedman v. Market Street Mortg. Corp., 520 F.3d 1289, 1297 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015533154&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1297&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1297); [Sosa v. Chase Manhattan Mortg. Corp., 348 F.3d 979, 982–83 (11th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003720840&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_982&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_982) (stating that a single party can violate § 2607(b) by marking up the charge of another settlement service provider, because “[g]iving a portion of a charge is prohibited regardless of whether there is a culpable acceptor, and accepting a portion of a charge is prohibited regardless of whether there is a culpable giver”). *See also* district court opinions: [Bushbeck v. Chicago Title Ins. Co., 2010 WL 2262340 (W.D. Wash. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022247334&pubNum=0000999&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Morales v. Countrywide Home Loans, Inc., 531 F. Supp. 2d 1225, 1228 (C.D. Cal. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014945905&pubNum=0004637&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1228&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1228) (“While such repricing or mark-ups could be actionable for other reasons (*e.g.* fraud), it is not a violation of RESPA.”); [Barnett v. Chicago Title Ins. Co., 2008 WL 3411684 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016740999&pubNum=0000999&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Maganallez v. Hilltop Lending Corp., 505 F. Supp. 2d 594, 605 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012114994&pubNum=0004637&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_605&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_605); [Patino v. Lawyers Title Ins. Corp., 2007 WL 4687748 (N.D. Tex. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014701266&pubNum=0000999&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Morrison v. Brookstone Mortg. Co., Inc., 2006 WL 2850522, \*7 (S.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010425243&pubNum=0000999&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (same); and [Welch v. Centex Home Equity Co., LLC, 262 F. Supp. 2d 1263, 1270 (D. Kan. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003358724&pubNum=0004637&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1270&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1270) (same). |
| [5](#co_fnRef_I81dc7250d6ee11ea8f41e1f6f2aa78) | [Krzalic v. Republic Title Co., 314 F.3d 875 (7th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002799886&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I81dc7251d6ee11ea8f41e1f6f2aa78) | [Echevarria v. Chicago Title & Trust Co., 256 F.3d 623 (7th Cir. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001565654&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I81dc7252d6ee11ea8f41e1f6f2aa78) | [Durr v. Intercounty Title Co. of Illinois, 826 F. Supp. 259 (N.D. Ill. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993141421&pubNum=0000345&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [14 F.3d 1183, 27 Fed. R. Serv. 3d 939 (7th Cir. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994030767&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I81dc7253d6ee11ea8f41e1f6f2aa78) | [Krzalic v. Republic Title Co., 314 F.3d 875 (7th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002799886&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Accord* [Martinez v. Wells Fargo Home Mortg., Inc., 598 F.3d 549 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021504342&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Moody v. Commonwealth Land Title Ins. Co., 284 Fed. Appx. 735 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016454653&pubNum=0006538&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Friedman v. Market Street Mortg. Corp., 520 F.3d 1289, 1291 (11th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015533154&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1291&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1291); [Santiago v. GMAC Mortg. Group, Inc., 417 F.3d 384, 388 (3d Cir. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007082932&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_388&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_388) (explaining that RESPA is not a price control statute and does not provide a cause of action for overcharges); [Kruse v. Wells Fargo Home Mortg., Inc., 383 F.3d 49 (2d Cir. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005045729&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (so long as overcharge is for services actually rendered it is not prohibited by RESPA); [Boulware v. Crossland Mortg. Corp., 291 F.3d 261, 268 (4th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002323184&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_268&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_268); [Hargis v. U.S. Bancorp, 2010 WL 2978100 (E.D. Mo. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022653379&pubNum=0000999&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Barnett v. Chicago Title Ins. Co., 2008 WL 3411684 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016740999&pubNum=0000999&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); and [Willis v. Quality Mortg. USA, Inc., 5 F. Supp. 2d 1306 (M.D. Ala. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998115806&pubNum=0004637&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), in which the court held that Reg X § 3500.14(c), intended by HUD to clarify RESPA’s prohibition against unearned and referral fees, could not expand the scope of RESPA to cover fees that were not split. “The statute prohibits the splitting of fees unless a service is actually performed” and Reg X does not “create an entirely new zone of proscribed conduct … payments which are not split, and which are not in exchange for business referrals, do not violate” § 2607. As to the plaintiffs’ argument that Reg X § 3500.14(g) obligates settlement service providers “to not charge home buyers more than is necessary for needed services,” the court held, “HUD is empowered to interpret the statute, not to create new laws. It appears that the payment to which the regulation refers is a payment from a mortgage lender to a mortgage broker, or vice versa. It does not refer to a payment from the borrower to the broker.” *But see* [Martinez v. Weyerhaeuser Mortg. Co., 959 F. Supp. 1511 (S.D. Fla. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997089624&pubNum=0000345&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding that a material issue of fact existed as to whether yield premium spread paid to broker violated RESPA); and [McCulloch v. Great Western Bank, 1998 WL 34013543 (W.D. Wash. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002371477&pubNum=0000999&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (not published) (“*Durr’s* conclusion that the difference between the amount charged and the amount paid must be split in order for there to be a violation of RESPA requires the existence of a *fourth* party; such a reading of RESPA is not justified.”). |
| [9](#co_fnRef_I81dc9960d6ee11ea8f41e1f6f2aa78) | [Echevarria v. Chicago Title & Trust Co., 256 F.3d 623 (7th Cir. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001565654&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I81dc9961d6ee11ea8f41e1f6f2aa78) | *Echevarria*, 256 F.3d at 879, citing [Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842–44, 104 S. Ct. 2778, 81 L. Ed. 2d 694, 21 Env’t. Rep. Cas. (BNA) 1049, 14 Envtl. L. Rep. 20507 (1984)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1984130736&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I81dc9962d6ee11ea8f41e1f6f2aa78) | *Echevarria*, 256 F.3d at 879. |
| [12](#co_fnRef_I81dcc070d6ee11ea8f41e1f6f2aa78) | *Echevarria*, 256 F.3d at 879. |
| [13](#co_fnRef_I81dcc071d6ee11ea8f41e1f6f2aa78) | *Accord* [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2040, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2040&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2040); [Boulware v. Crossland Mortg. Corp., 291 F.3d 261, 265–268 (4th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002323184&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_265&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_265). In Boulware, the Fourth Circuit Court of Appeals reached a similar conclusion in the context of a mortgage company’s markup of a credit report fee to $65, though the cost to the mortgage company was only $15. *Accord* [Willis v. Quality Mortg. USA, Inc., 5 F. Supp. 2d 1306, 1309 (M.D. Ala. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998115806&pubNum=0004637&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1309&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1309) (holding that RESPA’s prohibition against splitting fees unless service was actually performed was not expanded by HUD policy statement to prohibit payment of unearned fees which were not split). |
| [14](#co_fnRef_I81dcc072d6ee11ea8f41e1f6f2aa78) | *See* [Krzalic v. Republic Title Co., 539 U.S. 958, 123 S. Ct. 2641, 156 L. Ed. 2d 656 (2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003285892&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I81dcc073d6ee11ea8f41e1f6f2aa78) | [Freeman v. Quicken Loans, Inc., 131 S. Ct. 2478, 179 L. Ed. 2d 1207 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025286352&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I81dcc074d6ee11ea8f41e1f6f2aa78) | [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I81dcc075d6ee11ea8f41e1f6f2aa78) | [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2036, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2036&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2036). |
| [18](#co_fnRef_I81dce780d6ee11ea8f41e1f6f2aa78) | [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2036, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2036&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2036). |
| [19](#co_fnRef_I81dce781d6ee11ea8f41e1f6f2aa78) | [Krzalic v. Republic Title Co., 314 F.3d 875 (7th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002799886&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I81dce782d6ee11ea8f41e1f6f2aa78) | [Echevarria v. Chicago Title & Trust Co., 256 F.3d 623 (7th Cir. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001565654&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [21](#co_fnRef_I81dce783d6ee11ea8f41e1f6f2aa78) | [Christakos v. Intercounty Title Co., 196 F.R.D. 496 (N.D. Ill. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000495209&pubNum=0000344&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [22](#co_fnRef_I81dce784d6ee11ea8f41e1f6f2aa78) | [Christakos v. Intercounty Title Co., 196 F.R.D. 496, 502, 503(N.D. Ill. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000495209&pubNum=0000344&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_502&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_502):  Intercounty contends that § 2607(b) is not implicated because it did not “split” the $29 charge it imposed on Ms. Christakos as part of the settlement charges with anyone nor did it “kick back” any fees to parties who did nothing in return for the money received. Narrowly construed, this is true, but Intercounty misses the point. Ms. Christakos alleges that Intercounty itself is the party who received a split of the fee while doing nothing in return for its unearned $29. Intercounty compares this to the “windfall” it received in [Durr v. Intercounty Title Co. of Illinois, 14 F.3d 1183, 1187, 27 Fed. R. Serv. 3d 939 (7th Cir. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994030767&pubNum=0000506&originatingDoc=If4f5d58e6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1187&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1187), which the Seventh Circuit found did not trigger § 2607(b) because the overpayment was not shared with anyone but kept by this same defendant. However, this is not what Ms. Christakos alleges. Ms. Christakos claims that she paid $52.50 for the settlement charge to record the release, $23.50 of which went to Mellon, who actually recorded the release and thus earned the fee, and $29 of which went to Intercounty, who did nothing in return. These payments were made from the same pool of funds from the loan proceeds over which Intercounty, as settlement agent, had control and directed payments made from. Therefore, Intercounty received an unearned “portion” of a settlement fee that was unearned, in violation of 2607(b)….  Although this is not the typical kickback situation envisioned by RESPA’s drafters, the plain language of the statute and regulations are broad enough to cover a situation where a borrower pays two amounts to two parties for the exact same service, one of whom performs the service, and one of whom receives the unearned fee while providing no service whatsoever. |

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2 Title Ins. Law § 21:5 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:5. No requirement of particular title company

RESPA 2608, also called RESPA § 9 in older cases,[1](#co_footnote_I81e7e400d6ee11ea8f41e1f6f2a) prohibits sellers of property from directly or indirectly requiring a home buyer to purchase title insurance from a particular title company. [**Reg X**](http://practicallawconnect.thomsonreuters.com/Document/I8d74ec31ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) defines “required use” as a situation in which “a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service …”[2](#co_footnote_I81e80b10d6ee11ea8f41e1f6f2a) Reg X adds that the offering of discounts for the purchase of multiple settlement services does not constitute a required use so long as it is optional to the purchaser and is a true discount and not made up by higher costs elsewhere in the settlement process.

Section 9 will apply most often to developers of residential subdivisions.[3](#co_footnote_I81e80b11d6ee11ea8f41e1f6f2a) With [§ 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), Congress recognized that residential subdivision developers and builders are in a similar position to real estate settlement service providers in potentially being able to refer buyers of their homes to a particular title company for title insurance, escrow, and settlement services. The concern presumably was that developers and builders would make deals to benefit financially for sending their home buyers to particular title companies at their purchasers’ expense. In *Weisberg v. Toll Brothers*, for example, home buyers filed a [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) action under RESPA [§ 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) against 17 home builders, alleging that they required their home buyers to purchase title insurance from title insurance companies that the builders selected.[4](#co_footnote_I81e80b12d6ee11ea8f41e1f6f2a) The parties settled the action, with the builders paying a sum to the home buyer plaintiffs and agreeing to modify their standard purchase contract form with respect to the purchase of title insurance.[5](#co_footnote_I81e80b13d6ee11ea8f41e1f6f2a)

So long as the developer or builder allows a home buyer to use another title company when the purchaser prefers, neither RESPA § 2607 nor [§ 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) should bar the builder from suggesting that the parties may save time and money if both use the same title company that the developer/builder used when acquiring and subdividing the land and constructing the home. Since the goal of RESPA is to reduce time and expense in the residential real estate settlement process, it should not violate RESPA for the parties to take advantage of the economy and efficiency of utilizing the same [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), examination, underwriting, and curative work multiple times.[6](#co_footnote_I81e83221d6ee11ea8f41e1f6f2a) This question is considered further in [§ 21:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a6&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

Though sellers are prohibited from requiring use of a particular title insurance company, lenders are not.[7](#co_footnote_I81e83223d6ee11ea8f41e1f6f2a) Congress rejected an amendment that would have created that restriction, reasoning that lenders had business reasons for wanting to ascertain that the title insurance company insuring its mortgage liens has adequate reserves.

Neither RESPA nor Reg X expressly prohibits a real estate broker from requiring use of a particular title company. The common law of agency, however, considers a real estate broker to be the seller’s agent and on this basis the seller might be held liable if its real estate broker or agent required buyers to use a particular title company.[8](#co_footnote_I81e83224d6ee11ea8f41e1f6f2a)

As a subsequent section of this chapter discusses, RESPA [§ 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) does not apply to “affiliated business arrangements.” Additionally, according to Reg X, the offering of a package of settlement services or of discounts to consumers for the purchase of multiple settlement services does not constitute a “required use” so long as the seller does not require the purchaser to use any particular package or discount as a condition to selling the purchaser the property, and the discounts are not made up by higher costs elsewhere in the settlement process.[9](#co_footnote_I81e85930d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I81e7e400d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Section 9 of the original RESPA bill was codified as [12 U.S.C.A. § 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); the early cases, articles and treatises therefore frequently talk about [12 U.S.C.A. § 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) as RESPA § 9. |
| [2](#co_fnRef_I81e80b10d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.2(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I81e80b11d6ee11ea8f41e1f6f2aa78) | *See, generally,* [Weisberg v. Toll Bros., Inc., 617 F. Supp. 539 (E.D. Pa. 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985146398&pubNum=0000345&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (class plaintiffs contended real estate developers had violated RESPA [§ 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) by requiring them to purchase title insurance from companies selected by the defendant builders). |
| [4](#co_fnRef_I81e80b12d6ee11ea8f41e1f6f2aa78) | [Weisberg v. Toll Bros., Inc., 617 F. Supp. 539 (E.D. Pa. 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985146398&pubNum=0000345&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I81e80b13d6ee11ea8f41e1f6f2aa78) | Though it involved RESPA § 2607 instead of [§ 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), the case of Aiea Lani Corp. v. Hawaii Escrow & Title, Inc. similarly involved a developer who had been promised a rebate on his construction loan title insurance costs in exchange for referring all his purchasers to the same title agency for their closings and title insurance. The title agency planned to charge all home buyers the regular price for their title work and insurance, although the agency’s costs would be low because the agency already would have performed any necessary curative work prior to the developer’s purchase of the land and in connection with its subdivision, plus the title agency would have performed title examinations before each draw on the developer’s construction loan. *See* discussion in [§ 21:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a2&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I81e83221d6ee11ea8f41e1f6f2aa78) | *See generally* [Hopkins v. Horizon Management Services, Inc., 515 F. Supp. 2d 649, 658 (D.S.C. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013240093&pubNum=0004637&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_658&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_658), judgment aff’d, [302 Fed. Appx. 137 (4th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017576023&pubNum=0006538&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [24 C.F.R. § 3500.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  An economic incentive to purchase title insurance from Fidelity Title is not the same thing as a direct or indirect requirement to purchase title insurance from Fidelity Title. Further, the definition of “required use” in Regulation X supports the conclusion that offering an optional service at a discount is not a required use. |
| [7](#co_fnRef_I81e83223d6ee11ea8f41e1f6f2aa78) | *See* [Hopkins v. Horizon Management Services, Inc., 515 F. Supp. 2d 649, 657 (D.S.C. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013240093&pubNum=0004637&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_657&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_657), judgment aff’d, [302 Fed. Appx. 137 (4th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017576023&pubNum=0006538&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I81e83224d6ee11ea8f41e1f6f2aa78) | Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed., § 2.58. *See generally* [Hopkins v. Horizon Management Services, Inc., 515 F. Supp. 2d 649, 659 (D.S.C. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013240093&pubNum=0004637&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_659&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_659), judgment aff’d, [302 Fed. Appx. 137 (4th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017576023&pubNum=0006538&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (noting that even if buyer’s mortgage broker told buyer she had to use a particular title insurer, mortgage broker was not the seller’s agent). |
| [9](#co_fnRef_I81e85930d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.2(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d5916fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 21:6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:6. No requirement of particular title company—Simultaneous-issue rate for title insurance policies

As charts in [§§ 1:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a1&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) show, more than 90% of a title insurance premium is needed to pay for the operating costs required to provide the [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), examination, underwriting, and curative work involved in issuing a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), and less than 10% of the premium is needed to cover the insurance risk of loss. The cost to the title insurer of a second policy issued on the same title search, examination, underwriting, and curative work is only the small cost of the insurance for the additional risk. For this reason, title insurers offer a “simultaneous-issue rate” which charges the full price for one policy, but a significantly lower price for a second policy issued simultaneously on the basis of the same title work. In providing for a simultaneous-issue rate, instead of charging the same rate per thousand dollars of property value on each title insurance policy issued, title insurers ethically implemented their own policy against duplicate and unnecessary charges in residential real estate sales, before RESPA was even adopted.

Title insurers’ rate schedules cannot divide the costs of title search, examination, underwriting, and curative work equally between lenders and owner’s policies issued in a single transaction, because sometimes only one policy is purchased. Lenders require a policy insuring their mortgage lien, but the owner’s policy is optional. If the rate schedule did divide the costs equally between those two policies, but then a purchaser decided to obtain an attorney’s opinion rather than owner’s title insurance, or opted to forego owner’s title insurance to save money, then the rate for the single remaining lender’s policy would not cover the title insurer’s required costs in preparing that one policy. Similarly, if a buyer wants owner’s title insurance but purchases a home with cash, so that no loan policy will be issued in the transaction, then if the insurer’s rate schedule had divided the cost of the title work equally between two policies, the cost for the single owner’s policy would not cover all the title insurer’s costs. Therefore, title insurers’ rate schedules must always charge the total cost of the preliminary title work against any single policy that is to be issued on a parcel of land. If multiple policies will be purchased on the basis of the same title work, then the charge for each additional policy needs to cover only the small cost of the additional insurance.[1](#co_footnote_I81f30791d6ee11ea8f41e1f6f2a)

The custom varies from state to state regarding who pays for the owner’s and lender’s title insurance in a residential real estate transaction. In the majority of states, the home buyer pays for both. In another group of states, the seller of the home customarily pays for one policy, and the home buyer pays for one policy. In at least one state, regardless of what the title insurer charges for each of the two policies, the seller and home buyer customarily contract to total the cost and divide it equally. The custom sometimes varies in different regions of the same state. Title insurers’ rate schedules sometimes are adapted to the local custom, but they do not prevent home buyers and sellers from negotiating their own division of title insurance and other closing costs in their transaction.

In traditional “seller-pay” jurisdictions, a question has been raised about whether it violates RESPA § 2608 if the seller requires the buyer to purchase the lender’s policy from the same title insurer in order to benefit from the simultaneous-issue rate. Informal opinions by the HUD staff prior to 1992 had stated that seller pay transactions were exempted from § 2608 if the seller bore all or the major portion of the costs of the title insurance.[2](#co_footnote_I81f32ea0d6ee11ea8f41e1f6f2a) More recent comments from HUD, however, suggest that if a seller requires the buyer to use a particular title company, the seller should pay all the title insurance costs and cannot require any reimbursement, directly or indirectly.[3](#co_footnote_I81f32ea1d6ee11ea8f41e1f6f2a) According to HUD, if the buyer is to pay any share of the title insurance premiums, then the buyer must be permitted to shop among title insurance companies and choose the company that it prefers.[4](#co_footnote_I81f32ea2d6ee11ea8f41e1f6f2a) HUD must recognize, though, that closing costs will be higher if the home buyer and seller use different title insurance companies to issue the owner’s and lender’s policies. Each title insurance company will have to charge the full amount for the title search, examination, underwriting, and curative work that each will have to perform.

The question is most likely to arise in the context of builder-sellers because builder-sellers in many places have reversed the tradition as to which party in the transaction pays for the second policy. In the sale of *preexisting* homes, the custom in seller-pay states most often has been for the seller to pay full price for the owner’s title insurance and for the home buyers to pay the lower simultaneous-issue price for their lender’s policy. Therefore, in the sale of preexisting homes, in seller-pay states the buyer usually receives the direct financial benefit of the parties using the same title insurer. Conversely, builders in many places have asked title insurers to charge the cost of the first policy against the home buyer’s loan policy and the lower cost of the second policy against the owner’s policy that the builder offers to purchase. This sometimes is fashioned as a “builder’s rate.” Because the builder-seller only receives the simultaneous-issue rate for the owner’s policy if the home buyers purchase their lender’s policy from the same insurer, it has been alleged that the builder-seller is motivated to *require* home buyers to use a particular title company in violation of RESPA § 2608. This argument should not stand, however, where simultaneous-issue rates and builder’s rates both are available generally, because the builder-seller can buy the owner’s policy from the title company chosen by the home buyer and still pay only the simultaneous-issue rate.

It is likely that a developer/builder would *prefer* to use the title insurance company that assisted in the acquisition and subdivision of the land and in construction of the houses. That company already will be familiar with the title history of the subdivision and each lot and with the developer/builder’s sale contract forms, so the developer/builder may reasonably expect it to be more efficient to use the same company when transferring properties to home buyers. Plus, there may be additional cost savings if the title search, examination, underwriting, and curative work for which the developer/builder recently paid when acquiring and subdividing the land and constructing houses can be merely updated for the sales to home buyers. However, the mere fact that the builder-seller generally arranges for escrow services and title insurance from its former title agency or company for both itself and the home buyers should not imply a violation of RESPA § 2608. So long as a builder-seller does not actually *require* the home buyers to purchase their lender’s policy from the title company chosen by the builder-seller as a condition to purchasing the house, there should be no RESPA violation.[5](#co_footnote_I81f32ea3d6ee11ea8f41e1f6f2a)

Neither should the simultaneous-issue rate be implied to be an *agreement to refer* between every builder-seller and every title insurer in exchange for a *thing of value* in violation of RESPA § 2607(a).[6](#co_footnote_I81f32ea4d6ee11ea8f41e1f6f2a) Instead, the simultaneous-issue rate is available from all title insurers in all real estate transactions because title insurers acknowledge that a second policy issued on the same title search, examination, underwriting, and curative work costs the insurer less than the first policy. Offering a simultaneous-issue rate prevents unnecessary charges to consumers; it is not the same as making an agreement to give a party involved in the real estate sale process kickbacks or something of value in exchange for referrals of home buyers to a particular title insurance company. Also, as explained in the preceding paragraph, efficiency and economy may motivate builder-sellers to refer their buyers to the title agency that assisted in acquiring and subdividing the land and building the house, but the simultaneous-issue rate would not motivate referrals because the builder-seller could still get the simultaneous-issue rate if it bought the owner’s policy from a title insurance company selected by the home buyer. It would be contrary to the overall goal of RESPA if § 2607 or § 2608 were read to either require title insurers to charge the same price for two or more policies based on same title work, or to prohibit home buyers and sellers from taking advantage of efficiencies and economies inherent in having one title company issue two policies based on the same title search, examination, underwriting, and curative work.[7](#co_footnote_I81f355b1d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I81f30791d6ee11ea8f41e1f6f2aa78) | This is illustrated by the facts discussed in [Hopkins v. Horizon Management Services, Inc., 515 F. Supp. 2d 649, 657 (D.S.C. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013240093&pubNum=0004637&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_657&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_657), judgment aff’d, [302 Fed. Appx. 137 (4th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017576023&pubNum=0006538&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I81f32ea0d6ee11ea8f41e1f6f2aa78) | Hochberg, RESPA: Title Insurance and Seller Pay, 74 Title News 11 (May/June 1995), quoting Opinion No. 148 (Dec. 28, 1981). |
| [3](#co_fnRef_I81f32ea1d6ee11ea8f41e1f6f2aa78) | Hochberg, RESPA: Title Insurance and Seller Pay, 74 Title News 11 (May/June 1995), quoting Opinion No. 148 (Dec. 28, 1981), citing HUD Opinion No. 251 (Dec. 28, 1988). |
| [4](#co_fnRef_I81f32ea2d6ee11ea8f41e1f6f2aa78) | Hochberg, RESPA: Title Insurance and Seller Pay, 74 Title News 11 (May/June 1995). *See generally* [Hopkins v. Horizon Management Services, Inc., 515 F. Supp. 2d 649 (D.S.C. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013240093&pubNum=0004637&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [302 Fed. Appx. 137 (4th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017576023&pubNum=0006538&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I81f32ea3d6ee11ea8f41e1f6f2aa78) | *See generally* [Hopkins v. Horizon Management Services, Inc., 515 F. Supp. 2d 649 (D.S.C. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013240093&pubNum=0004637&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), judgment aff’d, [302 Fed. Appx. 137 (4th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017576023&pubNum=0006538&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I81f32ea4d6ee11ea8f41e1f6f2aa78) | RESPA § 2607(a) is considered in [§ 21:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a2&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this chapter. |
| [7](#co_fnRef_I81f355b1d6ee11ea8f41e1f6f2aa78) | *See generally* [Hopkins v. Horizon Management Services, Inc., 515 F. Supp. 2d 649, 658 (D.S.C. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013240093&pubNum=0004637&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_658&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_658), judgment aff’d, [302 Fed. Appx. 137 (4th Cir. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017576023&pubNum=0006538&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [24 C.F.R. § 3500.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d5946fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  An economic incentive to purchase title insurance from Fidelity Title is not the same thing as a direct or indirect requirement to purchase title insurance from Fidelity Title. Further, the definition of “required use” in Regulation X supports the conclusion that offering an optional service at a discount is not a required use. |

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2 Title Ins. Law § 21:7 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:7. Affiliated business exemption and disclosure requirements

To avoid RESPA’s ban on the paying of rebates or kickbacks, numerous providers within the real estate settlement process form controlled or affiliated business arrangements.[1](#co_footnote_I820dbb80d6ee11ea8f41e1f6f2a) An affiliated business arrangement exists when a real estate settlement service provider is partially owned by or affiliated with a person in a position to refer settlement services.[2](#co_footnote_I820dbb81d6ee11ea8f41e1f6f2a) Title agents, title insurance companies, and attorneys are considered to be “in a position to refer settlement services,” as are real estate brokers and agents, lenders, mortgage brokers, developers, and builders.[3](#co_footnote_I820dbb82d6ee11ea8f41e1f6f2a) RESPA § 2607(c) exempts affiliated business arrangements from the prohibitions of §§ 2607(a) and (b), so long as: (4)(A) disclosure of the affiliated business arrangement and a written estimate of the provider’s usual charges is given to the person being referred within a stated time period, which varies depending on the type of referrer and the means by which the referral is communicated;[4](#co_footnote_I820dbb83d6ee11ea8f41e1f6f2a) (4)(B) the person being referred is *not required* to use the affiliated provider of settlement services,[5](#co_footnote_I820dbb84d6ee11ea8f41e1f6f2a) and (4)(C) the only thing of value the referrer receives from the arrangement is a return on its ownership interest or franchise relationship, or other payments permitted under [§ 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[6](#co_footnote_I820de290d6ee11ea8f41e1f6f2a)

The “affiliated business” exception in [§ 2607(c)(4)(C)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) permits the referrer only a bona fide return on its ownership interest.[7](#co_footnote_I820de291d6ee11ea8f41e1f6f2a) It will not apply if payments to the referrer are calculated on the basis of the amount of referrals made, whether directly or indirectly. HUD’s RESPA Statement of Policy 1996-2 gives several examples of the factors HUD will apply when assessing whether a payment is a bona fide return on ownership interest or really a payment for referrals of settlement service business.[8](#co_footnote_I820de292d6ee11ea8f41e1f6f2a)

An exception to the rule in [§ 2607(c)(4)(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) that the person being referred cannot be *required* to use the affiliated settlement service provider is made for an attorney or law firm that represents a client in a residential real estate transaction and orders title insurance for its client as a title insurance agent or through a separate corporate title insurance agency operated by the attorney or law firm as an adjunct to its law practice.[9](#co_footnote_I820de293d6ee11ea8f41e1f6f2a) This exception allows for bar-related title insurance and attorney-owned title guaranty companies,[10](#co_footnote_I820de294d6ee11ea8f41e1f6f2a) which are described in [§§ 2:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs2%3a1&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise.

After finding that several supposed affiliated arrangements were shams devised as a “subterfuge for passing referral fees back to the referring party,” HUD added a fourth requirement via its RESPA Statement of Policy 1996-2,[11](#co_footnote_I820e09a1d6ee11ea8f41e1f6f2a) *i.e.*, the exemption is only available to a “*bona fide* provider” of settlement services.[12](#co_footnote_I820e09a2d6ee11ea8f41e1f6f2a) HUD’s RESPA Statement of Policy 1996-2 lists 10 factors that HUD will weigh in determining whether a party is a bona fide provider or a mere sham set up as a conduit for referral fees.[13](#co_footnote_I820e09a3d6ee11ea8f41e1f6f2a)

To meet [§ 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))’s disclosure requirements, any title insurance agent, real estate agent, mortgage broker, mortgage lender or builder who has a financial interest in or ongoing business relationship with another title insurance company, mortgage lender, or real estate agent involved in the transaction and who directly or indirectly refers a home purchaser or seller to their affiliate must inform both the purchaser and the seller, in writing, of the connection between the two companies.[14](#co_footnote_I820e30b0d6ee11ea8f41e1f6f2a)

HUD provides a sample format to be used to disclose a controlled business arrangement to the home buyer and seller.[15](#co_footnote_I820e30b1d6ee11ea8f41e1f6f2a) The form requires a description of the nature of the relationship, including ownership and financial interests, as well as the estimated charges for relevant settlement services. Most importantly, the disclosure should contain the following statements:

You are not required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase or sale of] the subject property. You may be able to get these services at a lower rate by shopping with other settlement services providers.[16](#co_footnote_I820e30b2d6ee11ea8f41e1f6f2a)

The disclosure must be on a distinct sheet of paper, not merely added on to the HUD-1 statement or other documents.[17](#co_footnote_I820e30b3d6ee11ea8f41e1f6f2a) Generally, the disclosure should be delivered when the referral is made, in the case of a written, electronic, or face-to-face referral, and within three business days after a telephone referral.[18](#co_footnote_I820e30b4d6ee11ea8f41e1f6f2a) When a lawyer or law firm requires the use of an affiliated title insurance agency, however, they must give the affiliated-business disclosure at the time that the attorney is retained.[19](#co_footnote_I820e30b5d6ee11ea8f41e1f6f2a) The referrer should ask the home buyer or seller for a written receipt of the disclosure at least by the time of settlement.[20](#co_footnote_I820e57c0d6ee11ea8f41e1f6f2a)

Nondisclosure and failure to give buyers and sellers a choice in selecting the necessary service providers may result in penalties.[21](#co_footnote_I820e57c1d6ee11ea8f41e1f6f2a) On October 7, 1992, Equity Title, a Minnesota title company, Edina Realty, Inc., a large brokerage firm, and a major lender entered into a settlement agreement with HUD after being threatened with prosecution under RESPA for allegedly referring business to one another without disclosing their affiliation.[22](#co_footnote_I820e57c2d6ee11ea8f41e1f6f2a) Equity, Edina, and the lender promised to include prominent, printed disclosures on all home-listing contracts and “good-faith” settlement cost estimate forms to advise clients of their affiliation. They also promised their future disclosures would make clear that clients are free to use any firm they wish for title searches, closings or financing and are under no obligation to employ any of the affiliated firms. Finally, the parties agreed to instruct employees that they were not required to refer clients to one of the affiliated companies for title work, financing, or other settlement services and that they would not be penalized for referring clients to other companies.

In May of 2003, HUD settled a suit against 13 New York attorneys who HUD alleged were improperly steering business to the title agency where they were principal shareholders. Prosecutors contended that the attorneys violated RESPA by receiving payments based on the volume of clients they referred to Covenant Abstract Co. Inc. The complaint alleged that the attorneys therefore violated the requirement that a referrer to an affiliate must receive no pay for the referral except what is collected in dividends based on their ownership interest in the affiliate.

A person who can establish by a preponderance of the evidence that he or she unintentionally violated [§ 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) is not liable.[23](#co_footnote_I820e57c3d6ee11ea8f41e1f6f2a) Such person must establish that the violation occurred because of a “*bona fide* error,” and that at the time of the error, reasonable procedures existed to avoid such errors.[24](#co_footnote_I820e57c4d6ee11ea8f41e1f6f2a)

*Exclusive Insurance Agencies*

In *Edwards v. First American Corp.*,[25](#co_footnote_I820e57c5d6ee11ea8f41e1f6f2a) [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) action plaintiffs raised three questions that neither RESPA nor HUD expressly address: (1) Is a title insurance agent’s writing a policy on an insurance company a “referral”? (2) Is a title insurance company’s payment to purchase an ownership interest in an agency that thereafter acts as a primarily exclusive agent for that insurer a “fee for referrals?” (3) Should the affiliated business exemption apply only when an owner “refers” business to an owned/controlled settlement service provider, and not when an owned/controlled settlement service provider “refers” business to its owner?

Editions of this treatise prior to 2016 tried to answer the first two of the preceding questions by analyzing general models of insurance distribution. The Ninth Circuit Court of Appeals’ subsequent opinion did not have to make assumptions based on general models, however, and instead quoted “Smoking Gun Memos” which revealed that First American’s “primary motivation underlying these transactions was not to gain returns from the ownership interests but to lock up remittance streams from future referrals.”[26](#co_footnote_I820e7ed0d6ee11ea8f41e1f6f2a) The Ninth Circuit Court left to the District Court the decision on whether this evidence proved First American had a scheme of paying for referrals in violation of RESPA. What the Ninth Circuit Court of Appeals did decide was that common questions regarding this alleged scheme predominated over individual issues and warranted class adjudication.[27](#co_footnote_I820e7ed1d6ee11ea8f41e1f6f2a)

*Payment for referrals?*

Commissions for title agents’ actual services performed in the issuance of a policy will not be considered payment for referrals according to RESPA [§ 2607(c)(1)(B)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[28](#co_footnote_I820e7ed2d6ee11ea8f41e1f6f2a) RESPA [§ 2607(c)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) also provides that payment for goods or facilities actually furnished and services actually performed will not violate RESPA. Plaintiffs alleged that the unlawful “payment for referrals” in the case of *Edwards v. First American Corp.* was the money First American Corporation paid for partial ownership interests in title insurance agencies.[29](#co_footnote_I820ea5e0d6ee11ea8f41e1f6f2a)

In its August 2015 opinion, the Ninth Circuit Court of Appeals held that the District Court had erred in relying on [§ 2607(c)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to determine the propriety of class certification because the ownership interests purchased by First American were equity shares, not goods, services, or facilities. The Court explained that “‘Goods’ are ‘tangible movable personal property having intrinsic value excluding money’; a ‘facility’ is ‘something (as a hospital, machinery, plumbing) that is built, constructed, installed, or established to perform some particular function or to serve or facilitate some particular end’; and ‘service’ is ‘the performance of work commanded or paid for by another.’”[30](#co_footnote_I820ea5e1d6ee11ea8f41e1f6f2a) The Court concluded, “The purchase of ownership interests—which are not goods, services, or facilities—disqualified First American’s transactions from the exemption under [§ 2607(c)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), regardless of whether the acquisitions may have also included facilities.”[31](#co_footnote_I820ea5e2d6ee11ea8f41e1f6f2a)

In prior editions of this treatise, this author anticipated that, to find the insurer paid anything for referrals in *Edwards*, the court would have to find the price paid to purchase the ownership interest in the agency was significantly more than the value of the economic benefits the insurer obtained from the ownership interest. The Ninth Circuit Court of Appeals, instead, held that “RESPA does not—as the district court held—require Edwards to pinpoint how much money First American paid for the referral agreement as opposed to the equity interest.”[32](#co_footnote_I820ea5e3d6ee11ea8f41e1f6f2a)

Rather, she can state a claim under RESPA § 8(a) by alleging that First American paid a lump sum of money to each captive title agency (the thing of value), and—in exchange for that money—each title agency agreed to refer First American future insurance (business agreement). Absent § 8(c), nothing in the statute requires Edwards to prove First American gave money to the title agencies only in consideration for the referral agreement. The statute merely prohibits the exchange of a “thing of value” for a referral agreement. [12 U.S.C. § 2607(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). It and the regulation define “thing of value” broadly to include a wide variety of considerations, and an exchange of a thing of value need not involve a transfer of money solely as a kickback. *See* [12 U.S.C. § 2602](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [24 C.F.R. § 3500.14(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). Here, Edwards alleges that First American paid the title agency a lump sum of money; in return, First American obtained two items: the title agency’s equity interest and the title agency’s agreement to refer future title insurance business. Whether this transaction violates RESPA § 8(a) does not require inquiry into individual issues of payment.[33](#co_footnote_I820eccf0d6ee11ea8f41e1f6f2a)

Of course, federal courts outside the Ninth Circuit may not take this same view. Without evidence like the “Smoking Gun Memos” in *Edwards*, a court could decide no additional price was paid for “referrals” so long as the purchase price for an ownership interest did not exceed the fair market value of the business as a [**going concern**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0e93ef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), its facilities, local advertising, lowered commissions to an exclusive agent, and lower claims due to the insurer’s ability to provide consistent education and resources to its own local agency.

*Affiliated Business Exemption?* When an insurance company buys a partial interest in an agency that sells the insurer’s policies, a layperson would consider the two businesses to be affiliated, but these facts do not fit squarely into RESPA’s “affiliated business arrangement” definition at [12 U.S.C.A. § 2602(7)(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). According to this definition, the affiliated business exemption[34](#co_footnote_I820eccf1d6ee11ea8f41e1f6f2a) expressly applies only when an owner[35](#co_footnote_I820eccf2d6ee11ea8f41e1f6f2a) or one in an affiliate relationship is in a position to refer business to an owned-provider; the allegation in *Edwards v. First American Corp.* is the opposite, *i.e.,* that the owned-agent “referred” business to the owner-insurer. HUD’s definition of “affiliate relationship” in [**Reg X**](http://practicallawconnect.thomsonreuters.com/Document/I8d74ec31ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) explains that one entity may have control over the other by virtue of a partnership or other agreement, or the entities may be under common control, or one entity may be a parent corporation and the other a subsidiary.[36](#co_footnote_I820eccf3d6ee11ea8f41e1f6f2a) But this does not seem to enlarge the exemption’s application to situations other than when the entity owning or controlling is the “referrer” of business to the owned or controlled entity. For this reason, the Ninth Circuit Court of Appeals in *Edwards v. First American Corp.,* held that RESPA’s “affiliated business exemption” could not apply to referrals from partially-owned agents to First American “as a matter of law.” The Court, thus, saw no reason to deny class action status for individual inquiries as to whether the “affiliated business exemption” applied to any of First American’s partially-owned title agencies.[37](#co_footnote_I82100570d6ee11ea8f41e1f6f2a)

The Ninth Circuit Court of Appeals cannot be faulted for applying RESPA’s affiliated business exemption literally. But there is a case to be made that the affiliated business exemption should be amended to apply whether it is the owning or owned business that makes “referrals.” So long as the affiliated business exemption’s disclosure conditions are met, it is difficult to see a reason to not make the exemption available and, instead, assess treble damages, if an owned business makes a “referral” to its owner.

Further, insurance experts consider sales by exclusive agents to be “direct writing” like sales by employee agents.[38](#co_footnote_I82102c80d6ee11ea8f41e1f6f2a) Reg X expressly permits payments by an employer for its employees’ referrals.[39](#co_footnote_I82102c81d6ee11ea8f41e1f6f2a) So long as the exclusive agent’s relationship with the insurer is disclosed pursuant to [§ 2607(c)(4)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), why should an exclusive agency’s writing policies for an insurer be treated so differently than an insurer’s employee writing the insurer’s policies? While many distinctions exist between other insurance lines and title insurance,[40](#co_footnote_I82102c82d6ee11ea8f41e1f6f2a) enough similarities in the insurance distribution models exist that an insurer’s acquiring a partial interest in an exclusive agency should not result in an assessment of treble damages without an express statement by HUD.

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| **Footnotes** | |
| [1](#co_fnRef_I820dbb80d6ee11ea8f41e1f6f2aa78) | O’Hara, Controlled Business Arrangements Concern Title Insurance Companies, 202 N.Y.L.J. 44 (1989):  It is generally acknowledged that the growth of these controlled business title agencies was caused by the prohibition on the payment and receipt of rebates or commissions for the referral of title insurance business, and other closing services, contained in § 8 [§ 2607] of the Real Estate Settlement Procedures Act (RESPA), enacted in 1974. |
| [2](#co_fnRef_I820dbb81d6ee11ea8f41e1f6f2aa78) | [Toldy v. Fifth Third Mortg. Co., 721 F. Supp. 2d 696 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022452660&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Wyman v. Park View Federal Sav. Bank, 2010 WL 4868120 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023911016&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 284-285 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_284&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_284), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Benway v. Resource Real Estate Services, LLC, 239 F.R.D. 419 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011088726&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 296 F. Supp. 2d 1011 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003939991&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [12 U.S.C.A. § 2602(7)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  (a) A person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally-related mortgage loan, or an associate of such person, has either an affiliate relationship or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (b) Either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider. |
| [3](#co_fnRef_I820dbb82d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.15(c)(9)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I820dbb83d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  Nothing in this section shall be construed as prohibiting … (4) affiliated business arrangements so long as (A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred (i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business; (ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone, (and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or (iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 5(c) are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral), (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, …. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender’s interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.  *See also* [24 C.F.R. § 3500.15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Carter v. Welles-Bowen Realty, Inc., 719 F. Supp. 2d 846, 855 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022430135&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_855&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_855). |
| [5](#co_fnRef_I820dbb84d6ee11ea8f41e1f6f2aa78) | “Required use” is defined at [24 C.F.R. § 3500.2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See* [Carter v. Welles-Bowen Realty, Inc., 719 F. Supp. 2d 846, 855 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022430135&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_855&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_855). |
| [6](#co_fnRef_I820de290d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See* [Carter v. Welles-Bowen Realty, Inc., 719 F. Supp. 2d 846, 855 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022430135&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_855&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_855); [Ngwa v. Castle Point Mortg., Inc., 2008 WL 3891263 (S.D. N.Y. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016825149&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that since there was no evidence of any compensation to Castle Point other than through ownership in Royal, the affiliated business exception was met and defendants’ motion to dismiss should be granted); [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 274–275 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_274&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_274), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 285 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_285&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_285), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 2003 WL 221844, \*2 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 296 F. Supp.2d 1011 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003939991&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I820de291d6ee11ea8f41e1f6f2aa78) | [Gardner v. First American Title Ins. Co., 296 F. Supp.2d 1011 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003939991&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  [24 C.F.R. § 3500.15(b)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* Illustration 10 at 24 C.F.R. § 3500 Appendix B exemplifying unlawful referral fees through a shell company and [Statement of Policy 1996-2, Regarding Sham Controlled Business Arrangements, 61 Fed. Reg. 29,258 (June 7, 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106440595&pubNum=0001037&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [8](#co_fnRef_I820de292d6ee11ea8f41e1f6f2aa78) | [Statement of Policy 1996-2, Regarding Sham Controlled Business Arrangements, 61 Fed. Reg. 29,258 (June 7, 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106440595&pubNum=0001037&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I820de293d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.15(b)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I820de294d6ee11ea8f41e1f6f2aa78) | A second exception is for a lender that requires a particular attorney, credit reporting agency, or real estate appraiser, to represent the lender’s interest in a residential real estate transaction. [24 C.F.R. §§ 3500.15(b)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [3500.7(e)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.7&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). This exception does not apply to lender’s referrals to title insurance agents or underwriters. Neither exception is available if the ABA is not a “*bona fide* provider of settlement services” under the HUD 10-factor analysis or fails to meet one of the three conditions under [§ 2607(c)(4)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Compare* [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 285 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_285&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_285), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 275 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_275&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_275), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) with [Gardner v. First American Title Ins. Co., 2003 WL 221844, \*2 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I820e09a1d6ee11ea8f41e1f6f2aa78) | [Statement of Policy 1996-2, Regarding Sham Controlled Business Arrangements, 61 Fed. Reg. 29,258 (June 7, 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106440595&pubNum=0001037&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I820e09a2d6ee11ea8f41e1f6f2aa78) | [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 285 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_285&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_285), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (an ABA that is not a “*bona fide* provider of settlement services” under the HUD 10-factor analysis or that fails to meet any of the three conditions set forth under Section 8(c)(4) is not otherwise eligible for the exemptions under section 8(c)”); [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 274-275 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_274&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_274), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 296 F. Supp. 2d 1011, 1017 n.7 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003939991&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1017&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1017). |
| [13](#co_fnRef_I820e09a3d6ee11ea8f41e1f6f2aa78) | [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 285 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_285&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_285), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 275 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_275&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_275), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Benway v. Resource Real Estate Services, LLC, 239 F.R.D. 419, 423 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011088726&pubNum=0000344&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_423&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_423); [Gardner v. First American Title Ins. Co., 2003 WL 221844, \*2 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [Statement of Policy 1996-2, Regarding Sham Controlled Business Arrangements, 61 Fed. Reg. 29,258 (June 7, 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0106440595&pubNum=0001037&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  HUD weighs ten factors in determining whether an affiliated business arrangement is a “bona fide” or “sham” service provider: (1) does the entity have sufficient initial capital and net worth; (2) is the entity staffed with its own employees; (3) does the entity manage its own business affairs; (4) does the entity have a separate office; (5) are substantial services provided by the entity; (6) does the entity perform substantial services by itself; (7) if the entity contracts out services, are they from an independent company; (8) if the entity contracts out work to another party, is the party performing any contracted services receiving a payment for services of facilities provided that bears a reasonable relationship to the value of the services or goods received; (9) is the new entity actively competing in the marketplace for business; and (10) is the entity sending business exclusively to one of the settlement providers that created it. HUD-s 10-factor test was held to be unconstitutional due vagueness, however, by the Federal District Court for the Northern District of Ohio in [*Carter v. Welles-Bowen Realty, Inc.*, 719 F.Supp.2d 846 (N.D.Ohio, 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022430135&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“vagueness of the individual factors is compounded by the subjective balancing process inherent in the test”). |
| [14](#co_fnRef_I820e30b0d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I820e30b1d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. Part 3500 Appendix D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRPT3500APPD&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I820e30b2d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. Part 3500 Appendix D](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRPT3500APPD&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [17](#co_fnRef_I820e30b3d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.15(b)(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Toldy v. Fifth Third Mortg. Co., 721 F. Supp. 2d 696, 709–710 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022452660&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_709&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_709); [Wyman v. Park View Federal Sav. Bank, 2010 WL 4868120 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023911016&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I820e30b4d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I820e30b5d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.15(b)(1)(ii)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [20](#co_fnRef_I820e57c0d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(c)(4)(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [21](#co_fnRef_I820e57c1d6ee11ea8f41e1f6f2aa78) | *See* Harney, The Nation’s Housing—Agents Must List Links to Lenders, Title Firms, Wash. Post, Oct. 17, 1992, E12. |
| [22](#co_fnRef_I820e57c2d6ee11ea8f41e1f6f2aa78) | *See* Harney, The Nation’s Housing—Agents Must List Links to Lenders, Title Firms, Wash. Post, Oct. 17, 1992, E12. |
| [23](#co_fnRef_I820e57c3d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(d)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [24](#co_fnRef_I820e57c4d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(d)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [25](#co_fnRef_I820e57c5d6ee11ea8f41e1f6f2aa78) | As of January 2016, the Ninth Circuit Court of Appeals has decided standing and class certification issues, but sent the *Edwards* case back to the U.S. District Court for the Central District of California for its decision on the RESPA issues. *See* [Edwards v. First American Corp., 798 F.3d 1172, 1183 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1183&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1183), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); and [Edwards v. The First American Corp., 385 Fed. Appx. 629 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022433523&pubNum=0006538&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Edwards v. First American Corp., 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and cert. dismissed as improvidently granted, [132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [26](#co_fnRef_I820e7ed0d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1183 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1183&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1183), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  Some of these Smoking Gun Memos described First American’s common strategy to purchase certain title agencies’ minority interests to secure their exclusive agreement to provide future referrals, and other Smoking Gun Memos revealed that the primary motivation underlying these transactions was not to gain returns from the ownership interests but to lock up remittance streams from future referrals. For example, in the documentation for the purchase of a minority interest in Doral Title, LLC, First American presented to its board a justification reciting in part, “[b]uying a minority interest now will ensure that we capture the Company’s u/w remittance streams.” Similarly, in connection with purchase of a minority interest in Equity Land Title LLC, First American told its board that “the u/w remittance stream is the primary source of our economic returns for this investment.” Pointing in the same direction, on purchase of minority share of Equity Title Insurance Agency, Inc., First American presented to its board that “[a]s a condition to closing the proposed transaction, [First American] and Equity will execute an exclusive agency agreement.” Besides the Smoking Gun Memos, Edwards also points to the standard contract terms that First American imposed on the captive title agencies to prohibit the agencies from issuing policies for First American’s competitors, subject to limited exceptions. |
| [27](#co_fnRef_I820e7ed1d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [28](#co_fnRef_I820e7ed2d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):  c) Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or … (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed …  *See also* discussion of core title agent services *supra* [§ 21:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a3&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [29](#co_fnRef_I820ea5e0d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 517 F. Supp. 2d 1199 (C.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013803393&pubNum=0004637&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d in part, rev’d in part on [other grounds, 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Edwards* further alleged that agreeing in the purchase contract that the agent subsequently will write insurance primarily for that insurer is an unlawful “agreement to refer.” |
| [30](#co_fnRef_I820ea5e1d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1180 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1180&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1180), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [31](#co_fnRef_I820ea5e2d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1180 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1180&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1180), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [32](#co_fnRef_I820ea5e3d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1181 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1181&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1181), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [33](#co_fnRef_I820eccf0d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1181 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1181&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1181), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [34](#co_fnRef_I820eccf1d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(c)(4)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [35](#co_fnRef_I820eccf2d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2602(7)(A)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2602&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) … “a person who is in a position to refer business incident to or a part of a real estate settlement service … has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider … and (B) refers such business to that provider or affirmatively influences the selection of that provider….” |
| [36](#co_fnRef_I820eccf3d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.15(c)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). HUD presumes control when one entity owns more than 20% of the voting interests of another. [24 C.F.R. § 3500.15(c)(4)(ii)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.15&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [37](#co_fnRef_I82100570d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1184-1185 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1184&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1184), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [38](#co_fnRef_I82102c80d6ee11ea8f41e1f6f2aa78) | L. Regan and S. Tennyson, *Insurance Distribution Systems*, in G. Dionne, HANDBOOK OF INSURANCE, p. 712 & 719 (2001). |
| [39](#co_fnRef_I82102c81d6ee11ea8f41e1f6f2aa78) | [24 C.F.R. § 3500.14(g)(1)(vii)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See generally* [McCullough v. Howard Hanna Co., 2010 WL 1258112 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021677016&pubNum=0000999&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). HUD intends this clause to exempt those referrals by employees that are not sufficiently distinct from the action of the employer to provide the plurality of actors needed to violate [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See* [57 Fed. Reg. 49,600](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0102190270&pubNum=0001037&originatingDoc=If4f5d5976fac11d98776f22b20adbd85&refType=FR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [40](#co_fnRef_I82102c82d6ee11ea8f41e1f6f2aa78) | *See* discussion *infra* Chapter 1. |

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2 Title Ins. Law § 21:8 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:8. Exemption for packages of settlement services

[**Reg X**](http://practicallawconnect.thomsonreuters.com/Document/I8d74ec31ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) exempts from its prohibition of discounts for referrals the offering of discounts to consumers who purchase a package of multiple settlement services, so long as purchasing the entire package is optional to the purchaser.[1](#co_footnote_I82155ca0d6ee11ea8f41e1f6f2a) HUD did not adopt proposed 2002 amendments to Reg X to expressly exempt “Guaranteed Mortgage Packages” from RESPA and from Reg X, however.[2](#co_footnote_I821583b0d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I82155ca0d6ee11ea8f41e1f6f2aa78) | Reg X, [24 C.F.R. § 3500.2(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.2&originatingDoc=If4f5d59a6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I821583b0d6ee11ea8f41e1f6f2aa78) | http://www.alta.org/govt/issues/02/67fr49134.pdf (June 7, 2003). |

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2 Title Ins. Law § 21:9 (2020 ed.)

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**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:9. Penalties

Agreements that violate RESPA § 2607 are declared illegal and are not enforceable by either party.[1](#co_footnote_I8227ac20d6ee11ea8f41e1f6f2a) Anyone violating RESPA § 2607 is subject to a fine of $10,000 or a prison sentence of not more than one year, or both.[2](#co_footnote_I8227ac21d6ee11ea8f41e1f6f2a) In addition, anyone violating RESPA is liable to persons charged for an amount equal to three times the amount that they paid for the settlement service.[3](#co_footnote_I8227ac22d6ee11ea8f41e1f6f2a) Finally, a court has authority to award the prevailing party costs and attorney’s fees on any private action brought under RESPA.[4](#co_footnote_I8227ac23d6ee11ea8f41e1f6f2a)

The treble damage clause of RESPA has been addressed in cases involving title insurance companies. While the language of [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) expressly states that it is “the amount of any charge paid for such settlement service” that is to be trebled, early federal district court opinions held that the proper penalty is three times the “amount that violates RESPA.” The case of *Morales v. Attorneys’ Title Insurance Fund, Inc.*, involved allegations that a 70% share of the title insurance premium being paid to title insurance agents in Florida violated RESPA [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[5](#co_footnote_I8227ac24d6ee11ea8f41e1f6f2a)

Under the plaintiffs’ literal approach to this language, recovery under RESPA would be three times the full amount of a settlement charge, regardless of the nature or extent of the alleged RESPA violation. According to the statute, however, damages consisting of three times the charge paid for a settlement service may be recovered by the “person charged for the settlement service *involved in the violation*.”… Thus, a better reading of the statute is that the damage award consists of three times the amount which violates RESPA.[6](#co_footnote_I8227d330d6ee11ea8f41e1f6f2a)

Comparing the damages clause in RESPA [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to the damages clause in § 2608—which permits an award of “an amount equal to three times all charges made” if a seller requires homebuyers to purchase title insurance from a particular company—the Florida court concluded that “in situations where Congress intended damages to be based on the entire amount of the settlement charge, it made such intention clear and unambiguous through the use of the words ‘all charges.’”[7](#co_footnote_I8227d331d6ee11ea8f41e1f6f2a)

The Florida court relied in part on the decision of the Federal District Court for the Northern District of Illinois in *Durr v. Intercounty Title Co. of Illinois*.[8](#co_footnote_I82289680d6ee11ea8f41e1f6f2a) The Illinois court granted the title insurance agency’s motion to dismiss for reasons discussed elsewhere in this chapter, but in dicta stated that the “plain meaning” of RESPA was to give three times the amount of the overcharge. In *Durr v. Intercounty Title Co.*, the RESPA violation alleged was the title company’s markup of recording fees; nevertheless, the plaintiff had sought, not just three times the amount of the title company’s recording charge, but three times all charges by the title company, including the title insurance premium and closing fee. The court’s determination that the intent of RESPA was to refund and treble the overcharge, rather than “the amount of any charge paid for such settlement service,” may have had as much to do with the court’s wish to penalize the “greed and obduracy” of the plaintiff’s attorney as with its interpretation of RESPA.

More recently, other federal courts have found that the early cases wrongly failed to consider both the plain language of [§ 2607(d)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and a 1983 amendment that changed its calculation of damages from three times “the value or amount of the fee or thing of value” to three times “any charge paid for such settlement service.”[9](#co_footnote_I82289681d6ee11ea8f41e1f6f2a) For example, the Federal District Court for the Western District of Pennsylvania expressly rejected *Morales v. Attorneys’ Title Insurance Fund, Inc.*, and also distinguished *Durr v. Intercounty Title Co.*, to hold that the current language of [§ 2607(d)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) does not require plaintiffs who allege an illegal referral to necessarily also show that they suffered an inflated charge.

The Federal District Court for the Central District of California similarly held that both the plain language of the statute and its legislative history favor a finding that damages under RESPA are not limited to only the amount consumers were overcharged for a settlement service.[10](#co_footnote_I8228bd90d6ee11ea8f41e1f6f2a) In *Edwards v. First American Corp.*, a homeowner-plaintiff alleged that First American Title Insurance paid large sums of money in exchange for certain closing agents giving all their title insurance business to First American. First American contended that, because the plaintiff’s State of Ohio regulated the cost of title insurance and all title insurers charged the same price, the plaintiff did not suffer an overcharge and, therefore, had no damages.[11](#co_footnote_I8228bd91d6ee11ea8f41e1f6f2a) Nevertheless, the court found the reason Congress amended [§ 2607(d)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) in 1983 to calculate violators’ penalties based on the entire settlement service fee was to reach nonexempt controlled business situations, like that plaintiff alleged between First American Title and her closing agent, where referral fees are not attached to individual transactions.[12](#co_footnote_I8228e4a0d6ee11ea8f41e1f6f2a) The court held, therefore, that the homeowner-plaintiff had standing to bring her claim that First American Title’s exclusive agency agreement with her title agency violated RESPA’s antikickback and antifee-splitting provisions. The Ninth Circuit Court of Appeals affirmed this decision.[13](#co_footnote_I8228e4a1d6ee11ea8f41e1f6f2a)

RESPA § 2608, mentioned above, makes only the home seller civilly liable, not the title company, and assesses no criminal penalties.[14](#co_footnote_I8228e4a2d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I8227ac20d6ee11ea8f41e1f6f2aa78) | [Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034, 2038, 182 L. Ed. 2d 955 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027757072&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_708_2038&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_708_2038); [Aiea Lani Corp. v. Hawaii Escrow & Title, Inc., 64 Haw. 638, 647 P.2d 257, 263 (1982)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1982129317&pubNum=0000661&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_661_263&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_661_263). |
| [2](#co_fnRef_I8227ac21d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(d)(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I8227ac22d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(d)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)): “Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.” |
| [4](#co_fnRef_I8227ac23d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2607(d)(5)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I8227ac24d6ee11ea8f41e1f6f2aa78) | [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I8227d330d6ee11ea8f41e1f6f2aa78) | [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418, 1427 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1427). *Accord* [Williams v. First American Title Ins. Co., 2005 WL 2219460 (N.D. Miss. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2007290566&pubNum=0000999&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (finding an overcharge necessary for standing); [Contawe v. Crescent Heights of America, Inc., 2004 WL 2244538 (E.D. Pa. 2004)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2005239835&pubNum=0000999&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that because plaintiffs failed to show that their settlement charges were inflated above the value of the services they received, they had no standing to bring a RESPA claim for damages under [§ 2607(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))); [Moore v. Radian Group, Inc., 233 F. Supp. 2d 819, 824 (E.D. Tex. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002595792&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_824&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_824), aff’d, [69 Fed. Appx. 659 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003420476&pubNum=0006538&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (stating that HUD has authority under [24 C.F.R. § 3500.14(g)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to “investigate violations of RESPA even if such arrangements cause no actual injury to consumers,” but that a private plaintiff wishing to bring suit under RESPA must first suffer actual injury in the form of inflated settlement charges). |
| [7](#co_fnRef_I8227d331d6ee11ea8f41e1f6f2aa78) | [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418, 1427 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1427). The Florida court also examined legislative history in reaching its result. One commentator, however, has noted that the Senate Bill cited pertained to the language of RESPA prior to its amendment in 1996 and, therefore, does not apply. Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed., § 2.56. |
| [8](#co_fnRef_I82289680d6ee11ea8f41e1f6f2aa78) | [Durr v. Intercounty Title Co. of Illinois, 826 F. Supp. 259 (N.D. Ill. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993141421&pubNum=0000345&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), aff’d, [14 F.3d 1183, 27 Fed. R. Serv. 3d 939 (7th Cir. 1994)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1994030767&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I82289681d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and cert. dismissed as improvidently granted, [132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [In re Carter, 553 F.3d 979 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017936566&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), reversing [Carter v. Welles-Bowen Realty, Inc., 493 F. Supp. 2d 921 (N.D. Ohio 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012389400&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), rev’d and remanded, [553 F.3d 979 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2017936566&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alston v. Countrywide Financial Corp., 585 F.3d 753 (3d Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020228337&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Alexander v. Washington Mut., Inc., 2008 WL 2600323 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016448263&pubNum=0000999&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (filed rate doctrine does not prohibit plaintiffs from bringing suit under RESPA for use of illegal kickback payments); [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 576 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_576&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_576) (filed rate doctrine prevents plaintiffs from suing under RESPA when they simply think that the price they paid for settlement services was unfair; alternatively, the filed rate doctrine does not prevent plaintiffs from suing under RESPA for kickback payments); [Yates v. All American Abstract Co., 487 F. Supp. 2d 579, 582 (E.D. Pa. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012229283&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_582&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_582) (finding standing without an overcharge); [Robinson v. Fountainhead Title Group Corp., 447 F. Supp. 2d 478 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2009728330&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (same); [Kahrer v. Ameriquest Mortg. Co., 418 F. Supp. 2d 748 (W.D. Pa. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2008628634&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 275 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_275&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_275), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Patton v. Triad Guar. Ins. Corp., No. CV 100-132 (S.D. Ga. Oct. 10, 2002) (finding standing without an overcharge; unpublished); and [Pedraza v. United Guar. Corp., 114 F. Supp. 2d 1347, 1351 (S.D. Ga. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000462575&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1351&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1351). |
| [10](#co_fnRef_I8228bd90d6ee11ea8f41e1f6f2aa78) | *E.g.*, [Edwards v. First American Corp., 517 F. Supp. 2d 1199, 1202 (C.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013803393&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1202&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1202), aff’d in part, rev’d in part on [other grounds, 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and cert. dismissed as improvidently granted, [132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“the plain language of the statute favors a finding that damages are not limited to overcharges: violators are liable for ‘any charge paid’ for settlement service”). |
| [11](#co_fnRef_I8228bd91d6ee11ea8f41e1f6f2aa78) | *See* further discussion of the “filed rate doctrine” *infra* [§ 21:11](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a11&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and §§ [15:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a12&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [15:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a13&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).  First American Title also argued that, unless able to show individual damages, consumers do not have a private right of action under RESPA, and only HUD or a state official can act under RESPA [§ 2607(d)(4)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to enjoin such referrals. [Edwards v. First American Corp., 517 F. Supp. 2d 1199, 1204 n.3 (C.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013803393&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1204&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1204), aff’d in part, rev’d in part, [610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari dismissed as improvidently granted, [132 S.Ct. 2536, 183 L.Ed.2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [12](#co_fnRef_I8228e4a0d6ee11ea8f41e1f6f2aa78) | “A 1982 House Committee Report noted that these practices could result in harm beyond an increase in the cost of settlement services:  [T]he advice of the person making the referral may lose its impartiality and may not be based on his professional evaluation of the quality of service provided if the referrer or his associates have a financial interest in the company being recommended. [Because the settlement service industry] almost exclusively rel[ies] on referrals … the growth of controlled business arrangements effectively reduce the kind of healthy competition generated by independent settlement service providers.”  H.R. Rep. No., 97-532, at 52 (1982)…. Indeed these fee-less situations were the moving force behind Congress’ 1983 amendment.” [Edwards v. First American Corp., 517 F. Supp. 2d 1199, 1203–1204 (C.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013803393&pubNum=0004637&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1203&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1203), aff’d in part, rev’d in part on [other grounds, 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and cert. dismissed as improvidently granted, [132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See, e.g.*, H.R. Rep. No. 98-123 at 75 (1983) (expecting that RESPA violators ‘involved in controlled business arrangements … shall be … liable … in the amount of three times the amount of the charge paid for the settlement service’).” |
| [13](#co_fnRef_I8228e4a1d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and cert. dismissed as improvidently granted, [132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). On June 20, 2011, the U.S. Supreme Court had granted First American Financial Corp.’s Petition for Certiorari, agreeing to answer whether a purchaser of a real estate settlement service who does not claim the alleged referral affected the price, quality or other characteristics of the settlement service has a “case or controversy” sufficient for standing to sue under [Article III, § 2 of the U.S. Constitution](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000583&cite=USCOARTIIIS2&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The Court did not agree to decide the question presented of whether the Ninth Circuit Court of Appeals erred in deciding that such a purchaser has standing under RESPA itself, but it had been hoped that the Court’s decision on whether a violation of a statute without out-of-pocket damages suffices for a “case or controversy” would shed light on when a plaintiff has standing under RESPA. The U.S. Solicitor General had advised the Court that the Ninth Circuit Court case was “in an interlocutory posture” not ready for review, however. *See* *Brief for the United States as Amicus Curiae*, pp. III & 17-20, First Brief for the United States as Amicus Curiae, pp. III & 17-20, [First American Financial Corp. v. Edwards, 2011 WL 1979649 (filed May 18, 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2025337157&pubNum=0000999&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). On June 28, 2012, the U.S. Supreme Court dismissed certiorari “as improvidently granted.” [First American Financial Corp. v. Edwards, 132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I8228e4a2d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See, generally,* [Weisberg v. Toll Bros., Inc., 617 F. Supp. 539 (E.D. Pa. 1985)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1985146398&pubNum=0000345&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (plaintiffs contended real estate developers had violated RESPA [§ 2608](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2608&originatingDoc=If4f5d59d6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) by requiring them to purchase title insurance from the companies selected by the defendant builders). |

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2 Title Ins. Law § 21:10 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:10. Class action status

Claims of RESPA violations frequently have been brought as [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) actions. [Federal Rule of Civil Procedure 23(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) identifies four requirements that must be satisfied before a class can be certified. These elements are that: “(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.”[1](#co_footnote_I82401620d6ee11ea8f41e1f6f2a) If the prerequisites of [Rule 23(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) are satisfied, the movant must go on and demonstrate that a class action can be maintained under one of the three categories described in [Federal Rule of Civil Procedure Rule 23(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)):[2](#co_footnote_I82401621d6ee11ea8f41e1f6f2a)

1. (1) the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
2. (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
3. (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.[3](#co_footnote_I82403d30d6ee11ea8f41e1f6f2a)

The party seeking class certification bears the burden of showing that all these requirements are satisfied and that the class should be certified.[4](#co_footnote_I82403d31d6ee11ea8f41e1f6f2a)

Regarding the [Rule 23(a)(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) requirement of “numerosity,” since title insurance is required by commercial lenders in every residential purchase transaction that includes a mortgage loan, in the context of claims involving title insurance, plaintiffs often assume that the requirement of numerosity is satisfied. Courts will consider commonsense assumptions and good-faith estimates[5](#co_footnote_I82403d32d6ee11ea8f41e1f6f2a) and classes have been certified with as few as 20–40 members.[6](#co_footnote_I82403d33d6ee11ea8f41e1f6f2a) Nevertheless, it is necessary for the plaintiffs to show some evidence or a reasonable estimate of the number of class members.[7](#co_footnote_I82403d34d6ee11ea8f41e1f6f2a)

Though not every question of law and fact must be common to the entire class, [Federal Rule of Civil Procedure 23(a)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) requires plaintiffs to show “commonality,” *i.e.*, that the course of action giving rise to their cause of action affects all putative class members, or that at least one of the elements of that cause of action is shared by all of the putative class members.[8](#co_footnote_I82406440d6ee11ea8f41e1f6f2a) It even has been said that “The presence of some factual variations among the class members does not defeat commonality, so long as there is at least one question of law or fact common to the class.”[9](#co_footnote_I82406441d6ee11ea8f41e1f6f2a) Even if individual issues exist, the proposed class usually will be linked by its attack on the particular practice. For example, in *Gardner v. First American Title Insurance Company*, the issue of whether partnerships between title insurance agencies and underwriters satisfied RESPA’s affiliated business arrangement exemption presented a legal question common to the entire class of purchasers of title insurance.[10](#co_footnote_I82406442d6ee11ea8f41e1f6f2a) Nevertheless, the commonality requirement is not satisfied just because plaintiffs’ complaint alleges in general terms that common issues exist. The complaint must identify facts or law to show that the answers to the common issues and the proofs will not vary based on factual circumstances of individual class members.[11](#co_footnote_I82406443d6ee11ea8f41e1f6f2a)

The third [Rule 23(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) test, “typicality,” requires that claims of the named plaintiffs emanate from the same event or are based on the same legal theory as the claims of the class members. For example, typicality is satisfied when the class representative complains that she and the members of the purported class all were charged unearned fees for services that the defendant did not perform.[12](#co_footnote_I82408b50d6ee11ea8f41e1f6f2a) This requirement also has been held to be satisfied when the class members seek the same relief, even if proof has not yet been made that the same facts exist in each case.[13](#co_footnote_I82408b51d6ee11ea8f41e1f6f2a)

If the representative parties have interests, claims, or defenses to counterclaims that are significantly different than the majority of class members, then neither typicality nor the fourth [Rule 23(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) requirement, “adequacy,” is present.[14](#co_footnote_I82408b52d6ee11ea8f41e1f6f2a) To satisfy the requirement of adequacy, plaintiffs must show “that (1) the representatives are able to prosecute the action competently and vigorously and (2) each representative’s interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge.”[15](#co_footnote_I8241c3d0d6ee11ea8f41e1f6f2a)

In addition to the [Rule 23(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) prerequisites, plaintiffs must demonstrate that a class action can be maintained under one of the three categories described in [Rule 23(b) of the Federal Rules of Civil Procedure](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). An action may be maintained as a class action under [Rule 23(b)(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) if plaintiffs show that the prosecution of separate actions would create a risk of (A) inconsistent adjudications and incompatible standards of conduct for settlement service providers, or (B) adjudications that would substantially impair the ability of members of the class who are not parties to the adjudications to protect their interests.[16](#co_footnote_I8241eae0d6ee11ea8f41e1f6f2a)

[Rule 23(b)(2)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) provides for maintenance of a class action where the relief sought is injunctive relief or declaratory relief with respect to the class as a whole.[17](#co_footnote_I8241eae1d6ee11ea8f41e1f6f2a) Most RESPA claimants and their attorneys have not sought injunctive or declarative relief but have been more interested in seeking the treble damages available under RESPA.

Finally, under [Rule 23(b)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), questions of law or fact common to the members of the class must “predominate over any questions affecting only individual members,” so that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”[18](#co_footnote_I8241eae2d6ee11ea8f41e1f6f2a) The District Court for the Northern District of Illinois has described “a classic [Rule 23(b)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) class” as one:

… with small or statutory damages brought by plaintiffs who allege similar mistreatment by a comparatively powerful defendant, one that, if the facts alleged were proved, otherwise might get away with piecemeal highway robbery by committing many small violations that were not worth the time and effort of individual plaintiffs to redress or were beyond their ability or resources to remedy.[19](#co_footnote_I8241eae3d6ee11ea8f41e1f6f2a)

Yet, it also is said that [Rule 23(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))’s “predominance” requirement is far more demanding than [Rule 23(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))’s “commonality” requirement, and that overarching questions must give way if there are questions of a greater significance that are peculiar to individual class members.[20](#co_footnote_I824211f0d6ee11ea8f41e1f6f2a) Most RESPA claims against title agencies and title insurance companies allege agreements to make referrals, actual referrals in exchange for compensation, lack of provision of bona fide settlement services by someone receiving payments, or failure to disclose an affiliated business arrangement. In the context of a RESPA § 8(a) claim, the court in *Gardner v. First American Title Ins. Co.* held that class status was not appropriate because plaintiffs must individually demonstrate actual referrals.[21](#co_footnote_I824211f1d6ee11ea8f41e1f6f2a)

Because HUD’s definition of a referral “includes any oral or written action directed to a person which has the effect of *affirmatively influencing* the selection of a settlement service,” [24 C.F.R. § 3500.14(f)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.14&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (emphasis added), the Court would have to individually adjudicate whether the use of Defendants title services in each of the 37,000 transactions at issue was, in fact, “affirmatively influence[d],” and by whom. Moreover, as the Eighth Circuit has recently held, RESPA anticipates a “loan-specific”—or in this case “title-specific” analysis “to determine the amount of damages warranted, if any.” [Glover v. Standard Federal Bank, 283 F.3d 953, 965 (8th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002196880&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_965&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_965). Under RESPA, the damages for a violation of the act are “equal to three times the amount of any charge paid for such settlement service.” [12 U.S.C.A. § 2607(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). As the Eighth Circuit noted, “The plain language of RESPA, then, demands that there be a determination of which settlement services are provided in connection with *each* real estate settlement….” [Glover, 283 F.3d at 965](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002196880&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_965&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_965) (emphasis added).[22](#co_footnote_I82423900d6ee11ea8f41e1f6f2a)

In *Gardner*, the court suggested this problem could not be solved by limiting the class to those who actually do satisfy the elements of the particular RESPA violation claimed because that could not be done without the kind of individualized fact finding forbidden by [Rule 23(b)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[23](#co_footnote_I82423901d6ee11ea8f41e1f6f2a) The court added that the complexity in that case “of computing 37,000 individual damage claims by itself” was “sufficient grounds for denying class treatment.”[24](#co_footnote_I82423902d6ee11ea8f41e1f6f2a)

In *Carter v. Welles-Bowen Realty, Inc.*, the Federal District Court for the Northern District of Ohio also recognized that, though common issues were involved in allegations that certain affiliated title companies were shams, a finder of fact would have to determine individually whether each class member had a federally related mortgage loan, and whether in any class member’s transaction the title company performed services entitling it to a [12 U.S.C.A. § 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) exemption. The court held that the substantial litigation that would be required of these individualized issues made class certification inappropriate.[25](#co_footnote_I82423903d6ee11ea8f41e1f6f2a)

Similarly, where plaintiffs alleged a mortgage broker’s practice of charging a “flat fee” was a per se violation of RESPA [§ 2607](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), the court held that the factual dispute over whether that flat fee was reasonably related to the services performed for each borrower had to be resolved individually.[26](#co_footnote_I82426010d6ee11ea8f41e1f6f2a) Other RESPA class actions also have been denied on grounds that liability under § 8 requires examination of the individual facts of each loan transaction.[27](#co_footnote_I82426011d6ee11ea8f41e1f6f2a)

As to the “superiority” prong of the [Rule 23(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) test, the Federal District Court for the Northern District of Ohio concluded that the financial disincentive that is the primary justification for class treatment is absent since RESPA awards both treble damages, court costs, and attorneys’ fees. “Thus, RESPA provides adequate incentive for individual plaintiffs to bring these types of claims, and a class action is not the ‘best method of trying the suit[.]’”[28](#co_footnote_I82426013d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I82401620d6ee11ea8f41e1f6f2aa78) | [Fed. R. Civ. P. 23(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Edwards v. First American Corp., 798 F.3d 1172, 1178 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1178&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1178), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Heimmermann v. First Union Mortg. Corp., 305 F.3d 1257, 1261 (11th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002590784&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1261&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1261); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 283 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_283&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_283), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Callahan v. Commonwealth Land Title Ins. Co., 1990 WL 168273 (E.D. Pa. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990158260&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I82401621d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172, 1178 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1178&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1178), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Carter v. Welles-Bowen Realty, Inc., 2010 WL 908464, \*2 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021542247&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 283 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_283&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_283), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lengle v. Attorneys’ Title Guaranty Fund, Inc., 2002 WL 31163672 (N.D. Ill. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002617005&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Christakos v. Intercounty Title Co., 196 F.R.D. 496 (N.D. Ill. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000495209&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I82403d30d6ee11ea8f41e1f6f2aa78) | [Fed. R. Civ. P. 23(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I82403d31d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 283–284 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_283&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_283), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lengle v. Attorneys’ Title Guaranty Fund, Inc., 2002 WL 31163672 (N.D. Ill. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002617005&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Christakos v. Intercounty Title Co., 196 F.R.D. 496 (N.D. Ill. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000495209&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I82403d32d6ee11ea8f41e1f6f2aa78) | [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 279 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_279&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_279), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lengle v. Attorneys’ Title Guaranty Fund, Inc., 2002 WL 31163672 (N.D. Ill. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002617005&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Christakos v. Intercounty Title Co., 196 F.R.D. 496, 502 (N.D. Ill. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000495209&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_502&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_502). |
| [6](#co_fnRef_I82403d33d6ee11ea8f41e1f6f2aa78) | [Lengle v. Attorneys’ Title Guaranty Fund, Inc., 2002 WL 31163672 (N.D. Ill. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002617005&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I82403d34d6ee11ea8f41e1f6f2aa78) | [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Lengle v. Attorneys’ Title Guaranty Fund, Inc., 2002 WL 31163672 (N.D. Ill. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002617005&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Christakos v. Intercounty Title Co., 196 F.R.D. 496, 501 (N.D. Ill. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000495209&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_501&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_501). |
| [8](#co_fnRef_I82406440d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 287 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_287&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_287), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 279 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_279&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_279), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Culpepper v. Irwin Mortg. Corp., 253 F.3d 1324 (11th Cir. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001518797&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [DeBoer v. Mellon Mortg. Co., 64 F.3d 1171, 33 Fed. R. Serv. 3d 457 (8th Cir. 1995)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1995177494&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Commonality is not required on every question raised in a class action. Rather, [Rule 23](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) is satisfied when the legal question ‘linking the class members is substantially related to the resolution of the litigation.’”); Romeo Jergess et al. v. Transnation Title Ins. Co. et al, Decision Certifying Case as a Class Action, Case No. 00-72124, p. 13 (E.D. Mich., Nov. 6, 2002) (unpublished decision holding that because plaintiffs all challenged the same flat rate charged to home builders for their purchasers’ title insurance when owner’s and lenders’ policies were simultaneously issued, common questions of fact or law existed); [Weil v. Long Island Savings Bank, FSB, 200 F.R.D. 164, R.I.C.O. Bus. Disp. Guide (CCH) P 10080 (E.D. N.Y. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001420759&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A single common issue of law will satisfy the commonality requirement…. A court may find a common issue of law even though there exists ‘some factual variation among class members’ specific grievances …’ ”); [O’Sullivan v. Countrywide Home Loans, Inc., 202 F.R.D. 504 (S.D. Tex. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001751264&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), rev’d on other grounds, [319 F.3d 732, 54 Fed. R. Serv. 3d 909 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003106760&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“A common question is one that, when answered as to one class member, ‘will affect all or a significant number of the putative class members.’”); [Callahan v. Commonwealth Land Title Ins. Co., 1990 WL 168273 (E.D. Pa. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990158260&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I82406441d6ee11ea8f41e1f6f2aa78) | [Lengle v. Attorneys’ Title Guaranty Fund, Inc., 2002 WL 31163672 (N.D. Ill. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002617005&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [10](#co_fnRef_I82406442d6ee11ea8f41e1f6f2aa78) | [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [11](#co_fnRef_I82406443d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [In re American Medical Systems, Inc., 75 F.3d 1069, 1079, 1080, 34 Fed. R. Serv. 3d 685, 1996 FED App. 0049P (6th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996051760&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1079&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1079). |
| [12](#co_fnRef_I82408b50d6ee11ea8f41e1f6f2aa78) | [Lengle v. Attorneys’ Title Guaranty Fund, Inc., 2002 WL 31163672 (N.D. Ill. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002617005&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 287–288 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_287&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_287), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (”The test for determining typicality is whether the claim or defense arises from the same course of conduct leading to the class claims, and whether the same legal theory underlies the claims or defenses.”); [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 280-281 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_280&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_280), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (because failure to operate as a bona fide service provider establishes RESPA liability, evidence of common business practices by plaintiff’s service provider and the others named established that plaintiffs were advancing class claims by advancing their own claims). *See also* [Benway v. Resource Real Estate Services, LLC, 239 F.R.D. 419 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011088726&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (where class defined by plaintiffs was too broad and therefore not typical, court exercised its discretion and limited the class to those class members who paid a fee to the one affiliated business arrangement involved in the plaintiff’s transaction). |
| [13](#co_fnRef_I82408b51d6ee11ea8f41e1f6f2aa78) | [In re American Medical Systems, Inc., 75 F.3d 1069, 1079, 1080, 34 Fed. R. Serv. 3d 685, 1996 FED App. 0049P (6th Cir. 1996)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1996051760&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1079&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1079). *See also* [O’Sullivan v. Countrywide Home Loans, Inc., 202 F.R.D. 504 (S.D. Tex. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001751264&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), rev’d on other grounds, [319 F.3d 732, 54 Fed. R. Serv. 3d 909 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003106760&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“[Rule 23(a)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) requires that ‘the claims or defenses of the representative parties are typical of the claims or defenses of the class…. Like commonality, the test for typicality is not demanding.’… Typicality exists when the claims of named and unnamed plaintiffs have a common source and rest upon the same legal and remedial theories.”); Romeo Jergess et al. v. Transnation Title Ins. Co. et al, Decision Certifying Case as a Class Action, Case No. 00-72124, p. 13 (E.D. Mich., Nov. 6, 2002) (unpublished order holding that it was irrelevant that factual differences might exist between the claims of the named plaintiffs and class members on an element of plaintiffs’ claims—*i.e.*, whether they actually were referred by builders to defendants—because plaintiffs’ theories of liability were aligned with those of the class); [Bjustrom v. Trust One Mortg. Corp., 199 F.R.D. 346, 349 (W.D. Wash. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001195667&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_349&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_349), order vacated on other grounds, [322 F.3d 1201 (9th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003233136&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“This requirement focuses on the similarity of the legal and remedial theories behind the claims of the representative plaintiff and the class members.”); [Callahan v. Commonwealth Land Title Ins. Co., 1990 WL 168273 (E.D. Pa. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990158260&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [14](#co_fnRef_I82408b52d6ee11ea8f41e1f6f2aa78) | [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 282 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_282&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_282), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [15](#co_fnRef_I8241c3d0d6ee11ea8f41e1f6f2aa78) | [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 288 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_288&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_288), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“The focus of the adequacy inquiry is on the competency of class counsel, class counsel’s willingness to prosecute the action and on whether any conflict of interest exists between the named parties and the class they represent.”); [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [16](#co_fnRef_I8241eae0d6ee11ea8f41e1f6f2aa78) | [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 281 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_281&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_281), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (plaintiffs made no showing that inconsistent adjudications would result in anything more than conflicting damage awards). |
| [17](#co_fnRef_I8241eae1d6ee11ea8f41e1f6f2aa78) | *See also* [Callahan v. Commonwealth Land Title Ins. Co., 1990 WL 168273 (E.D. Pa. 1990)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1990158260&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [18](#co_fnRef_I8241eae2d6ee11ea8f41e1f6f2aa78) | [Edwards v. First American Corp., 798 F.3d 1172 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Carter v. Welles-Bowen Realty, Inc., 2010 WL 908464, \*2 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021542247&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 289–290 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_289&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_289), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“the Court must find that common issues predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”); [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Dujanovic v. MortgageAmerica, Inc., 185 F.R.D. 660, 668 (N.D. Ala. 1999)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1999089960&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_668&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_668). |
| [19](#co_fnRef_I8241eae3d6ee11ea8f41e1f6f2aa78) | [Christakos v. Intercounty Title Co., 196 F.R.D. 496, 502 (N.D. Ill. 2000)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2000495209&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_502&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_502). *Accord* [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 290 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_290), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Benway v. Resource Real Estate Services, LLC, 239 F.R.D. 419, 426 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011088726&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_426&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_426). |
| [20](#co_fnRef_I824211f0d6ee11ea8f41e1f6f2aa78) | [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 283 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_283&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_283), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding that, despite common aspects of plaintiffs’ RESPA claim alleging sham affiliated business arrangements, individual issues predominated):  “Although related to commonality, the predominance requirement is far more demanding in that there must not only be common issues but those common issues must predominate over ‘questions affecting only individual members.’ [*Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997134004&pubNum=0000708&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).” |
| [21](#co_fnRef_I824211f1d6ee11ea8f41e1f6f2aa78) | [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 290 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_290), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (because proposed class members had received different disclosure forms, the potential for this individualized issue to arise in the course of litigation prevented certification of class as to issues involving whether defendants met § 2607(c)’s disclosure exemption). *But see* [Edwards v. First American Corp., 798 F.3d 1172, 1184 (9th Cir. 2015)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2036944825&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1184&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1184), cert. dismissed, [2016 WL 866426 (U.S. 2016)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2038426742&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Other sources of referral do not defeat the predominant common question of fact, i.e., whether the title agencies have contractual obligations to refer their customers to First American.”); [Benway v. Resource Real Estate Services, LLC, 239 F.R.D. 419, 425 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011088726&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_425&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_425) (rejecting the argument that plaintiffs would have to prove that each borrower was affirmatively influenced to use an affiliated business arrangement where defendants had an existing referral arrangement). |
| [22](#co_fnRef_I82423900d6ee11ea8f41e1f6f2aa78) | [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (holding also that applying HUD’s 10-point analysis to each of 25 ABAs would require the court to at least segregate class members by partnership). |
| [23](#co_fnRef_I82423901d6ee11ea8f41e1f6f2aa78) | [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“While the Court could solve this problem by limiting the class to those who received the form, that would require individualized fact finding of a kind forbidden by [Rule 23(b)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).”). *Contra* [Robinson v. Fountainhead Title Group Corp., 252 F.R.D. 275, 290 (D. Md. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016722227&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_290&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_290), on reconsideration, [R.I.C.O. Bus. Disp. Guide (CCH) P 11658, 2009 WL 539882 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018271788&pubNum=0001011&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), subsequent determination, [257 F.R.D. 92 (D. Md. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018658511&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (because of the potential for individualized issues to arise regarding class members having received different disclosure forms, court certified class only as to issue not involving whether defendants satisfied [§ 2607(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))’s disclosure exemption). |
| [24](#co_fnRef_I82423902d6ee11ea8f41e1f6f2aa78) | [Gardner v. First American Title Ins. Co., 2003 WL 221844 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [25](#co_fnRef_I82423903d6ee11ea8f41e1f6f2aa78) | [Carter v. Welles-Bowen Realty, Inc., 2010 WL 908464, \*3 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021542247&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), citing [O’Sullivan v. Countrywide Home Loans, Inc., 319 F.3d 732, 740, 54 Fed. R. Serv. 3d 909 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003106760&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_740&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_740) and [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 284 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_284&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_284), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [26](#co_fnRef_I82426010d6ee11ea8f41e1f6f2aa78) | [Anderson v. New Dimension Financial Services, L.P., 2001 WL 883700 (N.D. Ill. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001680764&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), report and recommendation adopted, [2001 WL 1155251 (N.D. Ill. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001832084&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [27](#co_fnRef_I82426011d6ee11ea8f41e1f6f2aa78) | *See, generally,* [Glover v. Standard Federal Bank, 283 F.3d 953 (8th Cir. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002196880&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Anderson v. New Dimension Financial Services, L.P., 2001 WL 883700 (N.D. Ill. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001680764&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), report and recommendation adopted, [2001 WL 1155251 (N.D. Ill. 2001)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2001832084&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Taylor v. Flagstar Bank, FSB, 181 F.R.D. 509, 524 (M.D. Ala. 1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1998158243&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_524&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_524); [Marinaccio v. Barnett Banks, Inc., 176 F.R.D. 104, 107 (S.D. N.Y. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997217111&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_107&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_107); [Moniz v. CrossLand Mortg. Corp., 175 F.R.D. 1, 4, 39 Fed. R. Serv. 3d 660 (D. Mass. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997151811&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_4&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_4); [Sicinski v. Reliance Funding Corp., 82 F.R.D. 730, 733, 27 Fed. R. Serv. 2d 1011 (S.D. N.Y. 1979)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1979115382&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_733&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_733). Nevertheless, where plaintiffs alleged that referrals to the same title insurance company could be implied from the practice of title insurers’ charging a flat builder’s rate for title insurance to builders who bought their home buyers’ title policy simultaneously with the buyers’ purchase of their lender’s policy, the United States District Court for the Eastern District of Michigan concluded that common questions of law and fact predominated over the possibility of the title insurers’ raising individual questions of law and fact. The court’s decision has not been published. Romeo Jergess et al. v. Transnation Title Ins. Co. et al, Decision Granting Motion to Certify Case as a Class Action, Case No. 00-72124, p. 19 (E.D. Mich., Nov. 6, 2002). Because the court believed that the jury could decide whether referrals had occurred based on the “pattern, practice, or course of conduct” of home buyers purchasing title insurance from the same company as their builders, the court held that common questions of law and fact predominated under [§ 2607(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). As to [§ 2607(b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), the court held that the only disputed issue was whether the builders’ rate resulted from the builder and title insurance company splitting the home buyers’ premium. Romeo Jergess et al. v. Transnation Title Ins. Co. et al, Decision Granting Motion to Certify Case as a Class Action, Case No. 00-72124, p. 20 (E.D. Mich., Nov. 6, 2002). Because the builder’s rate was given in each proposed class member’s title insurance purchase, the court held that individual issues of fact did not predominate and class certification was appropriate. Yet, the concept of “pattern, practice or course of conduct” appears in Reg X § 3500.14(e) defining proof of the existence of an agreement to refer between settlement service providers, not proof that referrals actually were made. Therefore, as in the cases cited above, evidence of a “practice or course of conduct” is not a substitute for evidence of actual referrals in individual cases. Furthermore, throughout the United States, owner’s and lender’s title insurance policies in the same residential real estate transaction normally are purchased from the same title insurance agent and underwriter, for reasons of both economy and efficiency. *See supra* [§ 21:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a6&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) discussing “simultaneous-issue” rates and “builder’s rate” for title insurance. It is efficient and economical to have just one contact person at one title company for the same real estate transaction, one person handling and recording all the documents for its settlement, and both policies issued based on just one title search, examination, set of curative actions, and underwriting process. Since economy and efficiency are reasonable explanations for the “pattern, practice and course of conduct” of both policies being purchased from the same title insurance company, it would be inappropriate to infer that the practice must be the consequence of an agreement to refer and actual referrals, and evidence of agreements to refer and actual referrals would need to be shown. This case, thus, appears contrary to the majority of opinions on whether a class action can be utilized for an action under RESPA [§ 2607(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2607&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) because of the need to prove actual referrals. |
| [28](#co_fnRef_I82426013d6ee11ea8f41e1f6f2aa78) | [Carter v. Welles-Bowen Realty, Inc., 2010 WL 908464, \*2 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021542247&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), quoting [Mayer v. Mylod, 988 F.2d 635, Fed. Sec. L. Rep. (CCH) P 97379, 25 Fed. R. Serv. 3d 151 (6th Cir. 1993)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1993065339&pubNum=0000350&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). The court supported its conclusion by noting that “A number of other courts have similarly concluded that RESPA’s fee-shifting and treble damages provisions preclude a finding of superiority under [Rule 23(b)(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR23&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).” *See, e.g.,* [Pettrey v. Enterprise Title Agency, Inc., 241 F.R.D. 268, 284 (N.D. Ohio 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2010964110&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_284&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_284), appeal dismissed, [584 F.3d 701 (6th Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020206049&pubNum=0000506&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hyderi v. Washington Mut. Bank, FA, 235 F.R.D. 390, 404 (N.D. Ill. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2008837007&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_404&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_404); [Gardner v. First American Title Ins. Co., 2003 WL 221844, \*8 (D. Minn. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003128769&pubNum=0000999&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); *but see* [Benway v. Resource Real Estate Services, LLC, 239 F.R.D. 419, 427 (D. Md. 2006)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2011088726&pubNum=0000344&originatingDoc=If4f5d5a06fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_427) (finding superiority in an affiliated-business RESPA case, without discussion of RESPA’s fee-shifting or treble damages provisions).” |

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2 Title Ins. Law § 21:11 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:11. Filed rate doctrine defense

Congress rejected the idea of making RESPA a federal rate control statute for residential real estate settlement services because to do so would infringe on an area that historically has been governed by the states.[1](#co_footnote_I824ce760d6ee11ea8f41e1f6f2a) In states where title insurance rates are promulgated by the State or approved by a state regulatory agency with opportunity for public input,[2](#co_footnote_I824d0e72d6ee11ea8f41e1f6f2a) the “filed rate doctrine” may be a defense to a private lawsuit that alleges merely that the charges of title insurance underwriters and agents are greater than the level of the services actually provided.[3](#co_footnote_I824d0e74d6ee11ea8f41e1f6f2a) In contrast, the filed rate doctrine may not be a defense for title insurers in states with less comprehensive regulation and no opportunity for public comment.[4](#co_footnote_I824d0e75d6ee11ea8f41e1f6f2a)

In *Morales v. Attorneys’ Title Insurance Fund, Inc.*,[5](#co_footnote_I824d3580d6ee11ea8f41e1f6f2a) a [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) action was filed on behalf of purchasers of title insurance in Florida alleging that title insurance underwriters violated RESPA § 2607(a) by giving “kickbacks, and/or other things of value” pursuant to agreements with title agents that were greater than the value of the services the title agents actually provided. They also alleged that Florida title insurance underwriters violated RESPA § 2607(b) by giving “splits, and/or percentages” of title insurance premiums pursuant to agreements with title agents that were greater than the value of the services the title agents actually provided. Because regulation of title insurance rates is comprehensive in Florida and the system includes public input in the rate-making process, the court reasoned that “concerns of agency authority, justifiability, and institutional competence” warranted applying the filed rate doctrine to bar individual citizens’ challenges to those title insurance rates under RESPA.[6](#co_footnote_I824d3581d6ee11ea8f41e1f6f2a)

Nevertheless, the filed rate doctrine will not prevent HUD from bringing an enforcement action regarding title insurance agents’ fees and title insurance rates. Furthermore, whether the filed rate doctrine will prevent a private plaintiff from suing for illegal kickback under RESPA § 2607(a) or illegal fee-splits under § 2607(b) if she paid no more for her title insurance premium than the rate state regulators set is considered *supra* in [§ 21:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a9&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).[7](#co_footnote_I824d3583d6ee11ea8f41e1f6f2a) The Third Circuit Court of Appeals, and the U.S. District Courts for the Eastern District of Pennsylvania and the Northern District of California have distinguished *Morales v. Attorneys’ Title Insurance Fund*, reasoning that:

Statutes like RESPA are enacted to protect consumers from unfair business practices by giving consumers a private right of action against service providers. Plaintiffs may not sue under the veil of RESPA if they simply think that the price they paid for their settlement services was unfair. Alternatively, plaintiffs bringing a suit under RESPA may allege a violation of fair business practices through the use of illegal kickback payments. The filed-rate doctrine bars suit from the former class of plaintiffs and not the latter.[8](#co_footnote_I824d5c90d6ee11ea8f41e1f6f2a)

The U.S. District Court for the Eastern District of Pennsylvania found in *Alexander v. Washington Mutual, Inc.*, that plaintiffs were not challenging the reasonableness or fairness of any rate set by the State of Pennsylvania. Instead, the plaintiffs claimed that “reinsurance premiums” that Washington Mutual paid its captive reinsurer were actually kickbacks or fee splits because WM Mortgage Reinsurance received over $295 million in reinsurance premiums without actually paying for a single loss.[9](#co_footnote_I824d5c91d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I824ce760d6ee11ea8f41e1f6f2aa78) | [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418, 1423 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1423&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1423), citing [S.REP. No. 93-866](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0100747269&pubNum=0001503&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=TV&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (1974), reprinted in, 1974 U.S.C.C.A.N., 6545, 6549-50. *See* additional cases cited in §§ [15:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a12&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [15:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a13&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [§ 21:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs21%3a2&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this chapter. |
| [2](#co_fnRef_I824d0e72d6ee11ea8f41e1f6f2aa78) | *See* [§§ 18:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a1&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [3](#co_fnRef_I824d0e74d6ee11ea8f41e1f6f2aa78) | [In re New Jersey Title Ins. Litigation, 683 F.3d 451, 2012-1 Trade Cas. (CCH) ¶ 77921 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904745&pubNum=0000506&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [McCray v. Fidelity Nat. Title Ins. Co., 682 F.3d 229, 2012-1 Trade Cas. (CCH) ¶ 77922 (3d Cir. 2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027904752&pubNum=0000506&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [In re Title Ins. Antitrust Cases, 702 F. Supp. 2d 840, 2011-1 Trade Cas. (CCH) ¶ 77374 (N.D. Ohio 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021678841&pubNum=0004637&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418, 1429 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1429&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1429). |
| [4](#co_fnRef_I824d0e75d6ee11ea8f41e1f6f2aa78) | [Blaylock v. First American Title Ins. Co., 504 F. Supp. 2d 1091 (W.D. Wash. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012920558&pubNum=0004637&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* discussion *supra* §§ [15:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a12&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [15:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs15%3a13&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I824d3580d6ee11ea8f41e1f6f2aa78) | [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418, 1429 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1429&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1429). |
| [6](#co_fnRef_I824d3581d6ee11ea8f41e1f6f2aa78) | [Morales v. Attorneys’ Title Ins. Fund, Inc., 983 F. Supp. 1418, 1429 (S.D. Fla. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997225504&pubNum=0000345&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_345_1429&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_345_1429). |
| [7](#co_fnRef_I824d3583d6ee11ea8f41e1f6f2aa78) | *See* [Alston v. Countrywide Financial Corp., 585 F.3d 753, 764-765 (3d Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020228337&pubNum=0000506&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_764&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_764); [Alexander v. Washington Mut., Inc., 2008 WL 2600323 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016448263&pubNum=0000999&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (distinguishing *Morales* to hold that the filed rate doctrine does not prohibit plaintiffs from bringing suit under RESPA for illegal kickback or fee-splitting scheme through their mortgage lender’s captive reinsurance arrangement); [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 576 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_576&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_576) (RESPA claim was not barred by the filed rate doctrine where plaintiffs alleged that mortgage lender’s captive reinsurance arrangement was actually a kickback scheme because little to no risk was transferred in fact); Patton v. Triad Guar. Ins. Corp., No. CV 100-132 (S.D. Ga. Oct. 10, 2002) (unpublished). |
| [8](#co_fnRef_I824d5c90d6ee11ea8f41e1f6f2aa78) | [Alexander v. Washington Mut., Inc., 2008 WL 2600323, \*3 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016448263&pubNum=0000999&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), quoting [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 576 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_576&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_576). *Accord* [Alston v. Countrywide Financial Corp., 585 F.3d 753, 764–765 (3d Cir. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2020228337&pubNum=0000506&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_764&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_764). |
| [9](#co_fnRef_I824d5c91d6ee11ea8f41e1f6f2aa78) | [Alexander v. Washington Mut., Inc., 2008 WL 2600323, \*3 (E.D. Pa. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2016448263&pubNum=0000999&originatingDoc=If4f5fc806fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 21:12 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:12. Statutes of limitation

The statute of limitations for private plaintiffs suing for an alleged violation of RESPA §§ 2607(a) and (b) is one year “from the date of the occurrence of the violation.”[1](#co_footnote_I825c50b0d6ee11ea8f41e1f6f2a) In *Snow v. First American Title Ins. Co.*,[2](#co_footnote_I825c50b1d6ee11ea8f41e1f6f2a) home buyers alleged that title insurance companies violated RESPA §§ 2607(a) and (b) by paying bonuses to agents who collected high volumes of premiums. The title insurance company defendants argued that a violation of RESPA should be deemed to occur and the statute of limitations begin to run at the closing of a plaintiff’s real estate purchase. The home buyer plaintiffs contended that the closing was not the only event that triggered the one-year limitation period, and that it began anew when a title insurance company paid an agent pursuant to their agreement. The Fifth Circuit Court of Appeals agreed with the title insurance companies’ interpretation and held that a RESPA action is barred one year after the closing of the home buyers’ real estate transaction.

The court concluded that the phrase “the date of the occurrence of the violation” referred to the closing, when the plaintiffs paid for the insurance. The court reasoned, first,[3](#co_footnote_I825c50b2d6ee11ea8f41e1f6f2a) that the primary ill that RESPA § 2607 was designed to remedy is the potential for “unnecessarily high settlement charges” and those charges occur when the purchaser pays for the service at the closing. “Plaintiffs therefore could have sued at that moment, and ‘the standard rule [is] that the limitations period commences when the plaintiff has a complete and present cause of action.’”[4](#co_footnote_I825dfe60d6ee11ea8f41e1f6f2a) Second, the plaintiffs’ interpretation would have allowed them to recover twice for a single violation in connection with a single settlement service, once for the violation at closing and again for the violation at payment. Third, the court reasoned that the date of the closing is more workable because it is definite and indisputable, while the date when the title insurance underwriters paid their agents is unknown to the plaintiffs and could occur months after the closing. Finally, the court noted that the case law uniformly supports that “the violation occurs and the limitations period begins once a borrower overpays for a settlement service.”[5](#co_footnote_I825dfe61d6ee11ea8f41e1f6f2a)

In a case where home buyers paid for a settlement service subject to RESPA §§ 2607(a) to (b) at a time other than the closing, then “the date of the occurrence of the violation” would be the date of payment, not the unrelated closing.[6](#co_footnote_I825dfe62d6ee11ea8f41e1f6f2a)

RESPA § 2608 is violated by a seller requiring a home buyer to purchase title insurance from a particular title company. Therefore, it seems that the closing also would be the date that a cause of action would accrue, since that is when payment for the title insurance would be made. Even if the seller attempted to assure the use of a particular title insurance company by inserting the company’s name in the standard-form sales contract,[7](#co_footnote_I825dfe63d6ee11ea8f41e1f6f2a) the cause of action should not accrue when the purchaser signs the contract because the contract may be changed before the closing.

The federal courts are divided on whether RESPA’s limitation period is subject to equitable tolling or equitable estoppel. “Equitable estoppel focuses primarily on the actions taken by the defendant in preventing a plaintiff from filing suit, whereas equitable tolling focuses on the plaintiff’s excusable ignorance of the limitations period and lack of prejudice to the defendant.”[8](#co_footnote_I825dfe64d6ee11ea8f41e1f6f2a) Courts holding that these doctrines are not available to plaintiffs under RESPA reason that the statute of limitations in RESPA is jurisdictional and, therefore, not subject to equitable tolling.[9](#co_footnote_I825e2570d6ee11ea8f41e1f6f2a)

In contrast, the majority of federal courts have held that, when adequately pled, the doctrines of equitable tolling and equitable estoppel are available under RESPA.[10](#co_footnote_I825e2571d6ee11ea8f41e1f6f2a) Regarding equitable estoppel, silence or passive conduct on the part of the settlement service provider will not suffice to entitle a plaintiff to equitable estoppel, unless the relationship of the parties imposes a duty upon the settlement service provider to make disclosure. RESPA itself imposes some disclosure requirements[11](#co_footnote_I825e2572d6ee11ea8f41e1f6f2a) upon real estate settlement service providers, and it is possible that failure to comply with such a requirement might entitle the plaintiff to equitable estoppel.

“Equitable tolling may be applied if a plaintiff was unable to obtain vital information regarding the existence of a claim despite due diligence.”[12](#co_footnote_I825e2573d6ee11ea8f41e1f6f2a) Consumers who are given disclosure of controlled or affiliated business arrangements with a number to call if they have questions or wish to opt out of the arrangement may not be able to show that they were unable to obtain all of the information necessary to discover their claims.[13](#co_footnote_I825e2574d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I825c50b0d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. § 2614](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2614&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I825c50b1d6ee11ea8f41e1f6f2aa78) | [Snow v. First American Title Ins. Co., 332 F.3d 356 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003383669&pubNum=0000506&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I825c50b2d6ee11ea8f41e1f6f2aa78) | [Snow v. First American Title Ins. Co., 332 F.3d 356 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003383669&pubNum=0000506&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I825dfe60d6ee11ea8f41e1f6f2aa78) | [Snow v. First American Title Ins. Co., 332 F.3d 356, 359, 360 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003383669&pubNum=0000506&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_359&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_359). |
| [5](#co_fnRef_I825dfe61d6ee11ea8f41e1f6f2aa78) | [Snow v. First American Title Ins. Co., 332 F.3d 356, 361 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003383669&pubNum=0000506&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_361&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_361). *Accord* [Cornelius v. Fidelity Nat. Title Co., 2009 WL 596585, \*6 (W.D. Wash. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018306471&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Hamilton v. First American Title Co., 2008 WL 382803 (N.D. Tex. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015229231&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Edwards v. First American Corp., 517 F. Supp. 2d 1199, 1204–1205 (C.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2013803393&pubNum=0004637&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1204&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1204), aff’d in part, rev’d in part on [other grounds, 610 F.3d 514 (9th Cir. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022340203&pubNum=0000506&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), certiorari granted in part, [131 S. Ct. 3022, 180 L. Ed. 2d 843 (2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2023918749&pubNum=0000708&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and cert. dismissed as improvidently granted, [132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2027995533&pubNum=0000708&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))(plaintiffs’ complaint was timely filed within one year of paying for the allegedly tainted title insurance service). For the same rule outside the context of title insurance, *see* [Basham v. Pacific Funding Group, 2010 WL 2902368 (E.D. Cal. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2022614284&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Farmer v. Countrywide Financial Corp., 2009 WL 1530973 (C.D. Cal. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018961023&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I825dfe62d6ee11ea8f41e1f6f2aa78) | [Snow v. First American Title Ins. Co., 332 F.3d 356 (5th Cir. 2003)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2003383669&pubNum=0000506&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *Also, compare* [Hardin v. City Title & Escrow Co., 797 F.2d 1037, 1039–1041 (D.C. Cir. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986141402&pubNum=0000350&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_1039&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1039) with [Mullinax v. Radian Guar. Inc., 199 F. Supp. 2d 311, 325 (M.D. N.C. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002268018&pubNum=0004637&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_325&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_325). |
| [7](#co_fnRef_I825dfe63d6ee11ea8f41e1f6f2aa78) | *See* Barron and Berenson, Federal Regulation of Real Estate and Mortgage Lending, 4th Ed., § 2.58, stating that this is a common means by which sellers attempt to require the use of a particular title company. |
| [8](#co_fnRef_I825dfe64d6ee11ea8f41e1f6f2aa78) | [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 577 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_577&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_577). *See also* [Hamilton v. First American Title Co., 2008 WL 382803, n.1 (N.D. Tex. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015229231&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [9](#co_fnRef_I825e2570d6ee11ea8f41e1f6f2aa78) | [Hardin v. City Title & Escrow Co., 797 F.2d 1037, 1041 (D.C. Cir. 1986)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1986141402&pubNum=0000350&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_350_1041&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_350_1041); [Winstead v. EMC Mortg. Corp., 697 F. Supp. 2d 1, 3 (D.D.C. 2010)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2021600087&pubNum=0004637&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_3&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_3). |
| [10](#co_fnRef_I825e2571d6ee11ea8f41e1f6f2aa78) | [Lawyers Title Ins. Corp. v. Dearborn Title Corp., 118 F.3d 1157, 1166–1167, 37 Fed. R. Serv. 3d 1148 (7th Cir. 1997)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1997140528&pubNum=0000506&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_506_1166&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_506_1166) (holding that the statute of limitations under RESPA may be subject to equitable tolling); [Perkins v. Johnson, 551 F. Supp. 2d 1246 (D. Colo. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015367064&pubNum=0004637&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Blaylock v. First American Title Ins. Co., 504 F. Supp. 2d 1091, 1107 (W.D. Wash. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012920558&pubNum=0004637&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1107&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1107) (“permitting equitable tolling in appropriate cases is more in line with the remedial purposes of RESPA”); [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 577 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_577&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_577); [Mullinax v. Radian Guar. Inc., 199 F. Supp. 2d 311, 325 (M.D. N.C. 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2002268018&pubNum=0004637&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_325&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_325) (holding that [§ 2614](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2614&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) is subject to equitable tolling). *See also* [Chapman v. Commonwealth Land Title Ins. Co., 2011 WL 721915 (N.D. Tex. 2011)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2024703852&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (assuming but not deciding that equitable tolling applies to a RESPA claim); Ahmad v. Old Republic Nat’l Title Ins. Co., 3:08-cv-229-P (N.D.TX. Aug 14, 2008); [Hamilton v. First American Title Co., 2008 WL 382803, n.1 (N.D. Tex. 2008)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2015229231&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (concluding it was unnecessary to decide whether RESPA’s statute of limitations may be tolled because plaintiffs had not set forth facts showing their entitlement to a tolling of the limitations period). |
| [11](#co_fnRef_I825e2572d6ee11ea8f41e1f6f2aa78) | *See* [12 U.S.C.A. § 2604(c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2604&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and the accompanying regulation in [24 C.F.R. § 3500.7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.7&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), which require a real estate settlement service provider to give “a good faith estimate of the amount or range of charges” for the service being provided. [24 C.F.R. § 3500.7(e)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=24CFRS3500.7&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) also requires disclosure if one provider requires the use of another real estate settlement service provider. |
| [12](#co_fnRef_I825e2573d6ee11ea8f41e1f6f2aa78) | [Cornelius v. Fidelity Nat. Title Co., 2009 WL 596585, \*7 (W.D. Wash. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018306471&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 577 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_577&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_577); [Blaylock v. First American Title Ins. Co., 504 F. Supp. 2d 1091, 1107 (W.D. Wash. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2012920558&pubNum=0004637&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_4637_1107&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_4637_1107). |
| [13](#co_fnRef_I825e2574d6ee11ea8f41e1f6f2aa78) | [Cornelius v. Fidelity Nat. Title Co., 2009 WL 596585, \*7 (W.D. Wash. 2009)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2018306471&pubNum=0000999&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (“Since the loan documents gave them notice of this claim, Plaintiffs will be held to have known it.”); [Kay v. Wells Fargo & Co., 247 F.R.D. 572, 577 (N.D. Cal. 2007)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2014267555&pubNum=0000344&originatingDoc=If4f5fc836fac11d98776f22b20adbd85&refType=RP&fi=co_pp_sp_344_577&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_344_577):  [T]he law does not insist that plaintiffs be aware of every particular element of their claim. Rather, all that is required is that plaintiffs be aware of the “possible existence” of a claim…. Through the disclosure statements, payment schedules, and general nature of the transaction, plaintiff was on notice of the possible existence of a claim. |

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2 Title Ins. Law § 21:13 (2020 ed.)

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**Chapter 21. Application of Real Estate Settlement Procedures Act to Title Agents and Title Insurance Underwriters**

§ 21:13. Comparable state laws

Many states have their own versions of RESPA. The reader is referred to [§ 18:43](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a43&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) *infra* and individual states’ statutes. For example, the New York State Insurance Code provides: “[n]o title insurance corporation or any other person acting for or on behalf of it, shall make any rebate of any portion of the fee, premium, or charge made … as an inducement for, or as compensation for, any title insurance business.”[1](#co_footnote_I82694901d6ee11ea8f41e1f6f2a) The New York State Department of Financial Services, after a five-year investigation of the title insurance industry, “found that lavish gifts were routinely being offered in anticipation of receiving business” which “led to rising costs for consumers.”[2](#co_footnote_I82697010d6ee11ea8f41e1f6f2a) In 2018, the Department promulgated regulations to the state Insurance Code to prohibit use of “high-priced tickets, meals, lavish gifts and strip clubs as inducements for title insurance business” and passing of such improper expenditures on to consumers.[3](#co_footnote_I82697011d6ee11ea8f41e1f6f2a)

Similarly, the Revised Code of Washington provides:

1. (1) A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give any fee, kickback, or other thing of value to any person as an inducement, payment, or reward for placing business, referring business, or causing title insurance business to be given to either the title insurer, or title insurance agent, or both.
2. (2) A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, except as permitted under rules adopted by the commissioner.[4](#co_footnote_I82697012d6ee11ea8f41e1f6f2a)

The federal RESPA statute, however, will preempt any conflicting state laws.[5](#co_footnote_I82697013d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I82694901d6ee11ea8f41e1f6f2aa78) | [N.Y. Ins. Law § 6409(d)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000090&cite=NYINS6409&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [New York State Land Title Association, Inc. v. New York State Department of Financial Services, 178 A.D.3d 611, 117 N.Y.S.3d 16 (1st Dep’t 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049929047&pubNum=0007980&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [Cal. Ins. Code § 12404(a)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000214&cite=CAINS12404&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Tex. Ins. Code Ann. § 9.30; [Fla. Stat. § 626.9541(1)(h)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS626.9541&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Mont. Code Ann. § 33-25-401(1)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1002018&cite=MTST33-25-401&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Utah Code Ann. § 31A-23-404(3)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS31A-23-404&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Kan. Stat. § 40-2404b(14)(a) & (b)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1001553&cite=KSSTS40-2404B&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) (1986); and [Wash. Rev. Code § 48.29.210](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.210&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Wash. Admin. Code 284-29-200](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003807&cite=WAADC284-29-200&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) to [284-29-260](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1003807&cite=WAADC284-29-260&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussed in [Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r, 178 Wash. 2d 120, 309 P.3d 372 (2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031199016&pubNum=0004645&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See, generally,* McDonald, Premium Splitting, Controlled Business and Ethical Considerations: Lawyers Writing Title Insurance, 1990 PLI Real Estate Law Practice Course Handbook, 358 (1990). |
| [2](#co_fnRef_I82697010d6ee11ea8f41e1f6f2aa78) | *Wining-and-dining ban on title insurance industry reinstated by Appellate court*, *https://therealdeal.com/2019/01/15* (last visited 1/16/2019). |
| [3](#co_fnRef_I82697011d6ee11ea8f41e1f6f2aa78) | *Court reverses ruling, sides with Cuomo against title insurance firms*, *https://www.crainsnewyork.com/real-estate/court-reverses-ruling-sides-cuomo-against-title-insurance-firms* (last visited 1/16/2019). The New York State Land and Title Association, the trade group for title insurers, had filed the suit to overturn these regulations, calling such gifts standard practice for building relationships, and argued that they should be allowed to continue including them as expenses that may be recovered through insurance rates. The Appellate Division of the New York State Supreme Court reinstated the majority of them. [New York State Land Title Association, Inc. v. New York State Department of Financial Services, 178 A.D.3d 611, 117 N.Y.S.3d 16 (1st Dep’t 2019)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2049929047&pubNum=0007980&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I82697012d6ee11ea8f41e1f6f2aa78) | [Wash. Rev. Code § 48.29.210](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST48.29.210&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), discussed in [Chicago Title Ins. Co. v. Washington State Office of Ins. Com’r, 178 Wash. 2d 120, 309 P.3d 372 (2013)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2031199016&pubNum=0004645&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [5](#co_fnRef_I82697013d6ee11ea8f41e1f6f2aa78) | [12 U.S.C.A. §§ 2605(h)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2605&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [2616](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS2616&originatingDoc=If4f5fc866fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law Ch. 22 Refs. (2020 ed.)

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**Chapter 22. Title Insurance on Property Outside the United States**

Research References

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| West’s Key Number Digest   1. West’s Key Number Digest, [Insurance](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217/View.html?docGuid=If4f5fc896fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))​[1013](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217k1013/View.html?docGuid=If4f5fc896fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))  1. West’s Key Number Digest, [Insurance](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217/View.html?docGuid=If4f5fc896fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))​[2610](http://practicallawconnect.thomsonreuters.com/Browse/Home/KeyNumber/217k2610/View.html?docGuid=If4f5fc896fac11d98776f22b20adbd85&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |

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2 Title Ins. Law § 22:1 (2020 ed.)

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§ 22:1. Introduction

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fc8c6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Some American title insurance underwriters also offer title insurance policies to cover property interests in countries other than the United States. They are modeled after [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))[1](#co_footnote_I8276b680d6ee11ea8f41e1f6f2a) [ALTA] Owners and Loan policies, but no one standard form exists for such title insurance. Since no equivalent to ALTA, the American title insurers’ national trade association, exists in the international arena, individual insurers create their own policies to insure interests in real property offshore.

Entities in Canada and Western Europe have promulgated their own title insurance. Mortgage impairment insurance also is being made available to insure pools of residential mortgages outside the U.S. and some of these policies cover loss resulting from title defects.

The remaining subsections of this chapter discuss the land title assurance systems utilized in countries other than the U.S. and the risks covered by each of the preceding forms of title insurance. The challenge, and likely, the duty, for counsel is to determine which form of title assurance offers the best security for their clients who are investing in real estate that is situated outside the United States.

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| **Footnotes** | |
| [1](#co_fnRef_I8276b680d6ee11ea8f41e1f6f2aa78) | ALTA is the American title insurers’ national trade association. ALTA promulgates standard title insurance forms that its members use throughout the United States. |

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2 Title Ins. Law § 22:2 (2020 ed.)

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§ 22:2. Majority of nations utilize land registration systems

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Title insurance developed in the United States[1](#co_footnote_I82853570d6ee11ea8f41e1f6f2a) and, therefore, was designed around the risks extant in American states’ systems for recording evidence of title in local public records. Most other nations employ a system of “registration of rights,” rather than the U.S. system of recordation of title evidence. The remainder of this section attempts to explain why properly functioning registers of rights provide greater land title security than can American states’ recording system. [Section 22:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a3&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) then discusses ways in which title insurance can give value in both countries whose registration systems do not function as intended, as well as in countries with properly functioning registration systems.

While nations’ land title registration systems vary somewhat in how they achieve their purpose, they all intend to establish the rights to each parcel of real estate through registration of the ultimate conclusion that a certain party has title to a definitely described tract of land and that no [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) nor junior, future, or contingent interests exist other than those shown in the registry.[2](#co_footnote_I82853573d6ee11ea8f41e1f6f2a) Land title registration systems accomplish this by providing for a judicial proceeding on the initial application to register any parcel of land. When the judicial determination of ownership is made, all other claims to the land are purged.[3](#co_footnote_I828646e0d6ee11ea8f41e1f6f2a) With few exceptions, rights not reflected in the register are not recognized, even if legitimate.[4](#co_footnote_I828646e1d6ee11ea8f41e1f6f2a) Many countries complement the land title security that their public land registration system provides with the institution of the public notary. Public notaries generally are attorneys. They are specially educated in conveyancing. The fact that public notaries exclusively are permitted to acknowledge and certify conveyances helps standardize conveyancing and reduce errors.[5](#co_footnote_I82873140d6ee11ea8f41e1f6f2a)

The registered title is transferred by the registrar making a new entry on the register in the name of the new owner. In many countries’ registration systems, no deed is utilized. It is the registrar’s entry in the register that transfers the title, not an instrument of conveyance. In systems that use title certificates, the registrar also issues a new certificate. When encumbrance are added or removed, notations are made in the register. In most systems, before the registrar will make a new entry or remove any previously registered rights, notice should have been provided to those whose registered interests would be affected, to give them an opportunity to object. Rights are registered as of the date on which the registrar received the transfer documents from the applicant.[6](#co_footnote_I82875850d6ee11ea8f41e1f6f2a)

Because the registry entry establishes the legal title, a prospective purchaser or lender wanting to learn the status of rights to a tract of land generally only needs to inspect the current land register.[7](#co_footnote_I82875851d6ee11ea8f41e1f6f2a) Information on the register should be clear and concise because of the purge of preexisting rights that accompanies each new registration.[8](#co_footnote_I82875852d6ee11ea8f41e1f6f2a) The register should show the rights granted in each new contract or deed, together with the surviving rights on the same parcel of land; extinguished rights are omitted.[9](#co_footnote_I82875853d6ee11ea8f41e1f6f2a) Employment of tract indices also allows efficient and accurate location of all rights in each parcel.[10](#co_footnote_I82875854d6ee11ea8f41e1f6f2a) While the prospective purchaser or lender needs only to inspect the current land register, the registrar nevertheless maintains files or books containing copies of all documents referred to in the land register, so that an examiner can review them for details about property interests or encumbrance if necessary.

“Given that any contradictions have been purged, the register is able to provide ‘conclusive,’ ‘indefeasible’ title” when a transfer is based on the information in the register.[11](#co_footnote_I82875855d6ee11ea8f41e1f6f2a) A small number of exceptions are legally recognized, however. In the United Kingdom these are described as “overriding interests”[12](#co_footnote_I82875856d6ee11ea8f41e1f6f2a) and that term will be used here. They are rights created by law or by possession and generally are the same types of rights that a *bfp* takes subject to despite their not being recorded in the public land records in the U.S.[13](#co_footnote_I82875857d6ee11ea8f41e1f6f2a) One category of overriding interests includes liabilities that arise by statute, such as land taxes, land use regulations, certain public easements, and the government’s right to take property for a public purpose.[14](#co_footnote_I82875858d6ee11ea8f41e1f6f2a) A second category of overriding interests includes rights that might be ascertained by inspection of the land or inquiry of persons in possession, like short-term residential leases and rights of access, drainage, or light permitted to neighboring properties when necessary.[15](#co_footnote_I82875859d6ee11ea8f41e1f6f2a) There is no reason to think that these rights created by law or possession would be asserted with any more frequency than such rights are asserted in the U.S.

Few other title claims occur in properly functioning land registration systems.[16](#co_footnote_I82877f60d6ee11ea8f41e1f6f2a) One empirical study showed approximately one title claim against registrars in Australia and Spain for every 1,000 claims filed against title insurance policies in the United States.[17](#co_footnote_I82877f61d6ee11ea8f41e1f6f2a) This result obtains because (a) registers of rights use tract indices, (b) the grantee must obtain the current title holder’s title certificate and submit it with any application to alter the registration, (c) in some countries, previously registered right holders will have been given notice and an opportunity to object prior to the registrar’s making any new entry that affects their interests[18](#co_footnote_I82877f62d6ee11ea8f41e1f6f2a) and (d) *bona fide* registered owners retain the land even if a true owner materializes.[19](#co_footnote_I82877f63d6ee11ea8f41e1f6f2a) Usually, in a properly functioning registration system, the only cases in which a registered title will be defeated are (1) if it is “corrected” because the registered titleholder was at fault in causing an incorrect registration;[20](#co_footnote_I82877f64d6ee11ea8f41e1f6f2a) and (2) if two conclusive registrations conflict, as in the case of two coexisting registrations that include the same real property, then the one registered first is entitled to the property as against the party whose registration was second.[21](#co_footnote_I82877f65d6ee11ea8f41e1f6f2a)

A *bona fide* right holder who is erroneously deprived of title will have a personal right to compensation.[22](#co_footnote_I82877f66d6ee11ea8f41e1f6f2a) For example, if Blackacre is registered as owned by “A,” and a portion of Blackacre also is included in the description of land subsequently registered as owned by “B,” A will be entitled to the land. B would have a loss and a cause of action against her transferor, a surveyor, the registry, the government, or other party at fault. If B’s title was insured, the title insurer would pay B’s claim and then recover its payment by asserting B’s rights against the parties at fault.

When misfeasance or negligence of the registry office permitted an erroneous registration, systems vary in terms of who is liable for such errors.[23](#co_footnote_I82877f67d6ee11ea8f41e1f6f2a) In many countries, the law provides for the registry office to compensate deprived right holders for registration errors.[24](#co_footnote_I82877f68d6ee11ea8f41e1f6f2a) In Germany, because it is “the law that defines the affected parties,”[25](#co_footnote_I8287a670d6ee11ea8f41e1f6f2a) and in China, which has followed the German system, the law provides that the state will pay. In Spain, where registrars make the determination of the parties who will be affected if a right is registered, registrars are personally liable.[26](#co_footnote_I8287a671d6ee11ea8f41e1f6f2a) The Torrens’ registers in Australia, England, and Canada are backed by a public insurance fund, financed by the fees of users.[27](#co_footnote_I8287a672d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I82853570d6ee11ea8f41e1f6f2aa78) | *See* [§§ 1:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a1&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [2](#co_fnRef_I82853573d6ee11ea8f41e1f6f2aa78) | [Application of Bickel, 301 Ill. 484, 134 N.E. 76 (1922)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=1922111201&pubNum=0000577&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Stark, Examination of Registered Titles, in Patton and Palomar on Land Titles 3rd ed., Ch. 14. |
| [3](#co_fnRef_I828646e0d6ee11ea8f41e1f6f2aa78) | *See* Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 19 (2003). Schwarzwalder, Land Registration, in Legal Impediments To Effective Rural Land Relations In Eastern Europe And Central Asia, A Comparative Perspective, World Bank Technical Paper No. 436, 167 (Prosterman & Hanstad, eds., World Bank, 1999); Hanstad, [Designing Land Registration Systems for Developing Countries, 13 Am. U. Int’l. L. Rev. 647 (1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0108818770&pubNum=0115964&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=LR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Bostick, [Land Title Registration: An English Solution to an American Problem, 63 Ind. L. J. 55 (Winter 1988)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0101404590&pubNum=0001167&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=LR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); Comment, [The Russian Title Registration System for Realty and Its Effect on Foreign Investors, 73 Wash. L. Rev. 989 (1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0110222980&pubNum=0001281&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=LR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I828646e1d6ee11ea8f41e1f6f2aa78) | Nevertheless, in Canada and England, reportedly, courts sometimes recognize exceptions in the interest of fairness and equity. |
| [5](#co_fnRef_I82873140d6ee11ea8f41e1f6f2aa78) | *See* Creekmore, Title Insurance In Mexico More Than Just A Policy, Arizona Journal Of Real Estate & Business (June 2000):  These highly educated and “hand picked” public notary’s have the obligation, right and privilege to consummate all real estate transactions within their given territorial jurisdiction. Their acknowledgment and certification procedure provides “judicial certainty” to the authenticity of the process. |
| [6](#co_fnRef_I82875850d6ee11ea8f41e1f6f2aa78) | “A register of rights can thus be fruitfully seen as a double register: It is both a temporary register of deeds (the ‘lodgment’ or ‘presentation’ book that dates contradictory titles) and a definitive register of rights.” Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 13 (2003). |
| [7](#co_fnRef_I82875851d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 13 (2003). Making the same statement as to land registration systems authorized in a few American states or counties, *see* Stark, Examination of Registered Titles, in Patton & Palomar on Land Titles 3rd ed., Ch. 14. |
| [8](#co_fnRef_I82875852d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 13 (2003). |
| [9](#co_fnRef_I82875853d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 13 (2003). |
| [10](#co_fnRef_I82875854d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 13 (2003). |
| [11](#co_fnRef_I82875855d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 13 (2003). |
| [12](#co_fnRef_I82875856d6ee11ea8f41e1f6f2aa78) | *See, e.g.*, the list of overriding interests to which registered land may be subject in England pursuant to § 70 of the Land Registration Act (1925). |
| [13](#co_fnRef_I82875857d6ee11ea8f41e1f6f2aa78) | The interests that may defeat the registered title generally are said to be fewer than in U.S. states’ recording system. |
| [14](#co_fnRef_I82875858d6ee11ea8f41e1f6f2aa78) | *See* Palomar, [Land Tenure Security as a Market Stimulator in China, 12 Duke J. Comp. & Int’l L. 7, 62 (Winter 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0287965235&pubNum=0101272&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_101272_62&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_101272_62). (Section II.A.3). |
| [15](#co_fnRef_I82875859d6ee11ea8f41e1f6f2aa78) | *See* Palomar, [Land Tenure Security as a Market Stimulator in China, 12 Duke J. Comp. & Int’l L. 7, 62 (Winter 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0287965235&pubNum=0101272&originatingDoc=If4f5fc8f6fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_101272_62&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_101272_62). (§ II.A.7). |
| [16](#co_fnRef_I82877f60d6ee11ea8f41e1f6f2aa78) | Arrunada, A Transaction-Cost View of Title Insurance and its Role in Different Legal Systems, The Geneva Papers on Risk and Insurance-Issues and Practice, 27 (3), p. 12 (July 2002). Also in Working Paper Series of The Geneva Association, Etudes et Dossiers, no. 248, December 2001. |
| [17](#co_fnRef_I82877f61d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement and the Organization of Consent, Universitat Pompeu Fabra, Economics and Business Working Paper Series 564, December 2001.(http://www.econ.upf.es/cgi-bin/onepaper?564). |
| [18](#co_fnRef_I82877f62d6ee11ea8f41e1f6f2aa78) | Arrunada, A Transaction-Cost View of Title Insurance and its Role in Different Legal Systems, The Geneva Papers on Risk and Insurance-Issues and Practice, 27 (3), p. 13 (July 2002). Nevertheless, not every country with a registration system requires notice and consent before a registered right holder may be removed from the registry, and reportedly, not every country whose registration provides for notice and consent regularly employs that procedure. *See, e.g.*, Randolph, Jr. and Jianbo, CHINESE REAL ESTATE LAW, p. 165 (2000 Kluwer Law International). |
| [19](#co_fnRef_I82877f63d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 19 (2003). |
| [20](#co_fnRef_I82877f64d6ee11ea8f41e1f6f2aa78) | One Canadian attorney has complained, however, to this author that the concept of notice has been applied so often to the Canadian registry that it has become similar to American “notice” recording acts that protect only bfps.  As discussed below, this party would have no indemnifiable claim under any title insurance policy because of the exclusion for matters known by the insured or created, suffered, or assumed by the insured. |
| [21](#co_fnRef_I82877f65d6ee11ea8f41e1f6f2aa78) | Stark, Encumbrance in Spite of Certificate, in Patton & Palomar on Land Titles 3rd ed., § 687. |
| [22](#co_fnRef_I82877f66d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement and the Organization of Consent, Universitat Pompeu Fabra, Economics and Business Working Paper Series 564, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?564). |
| [23](#co_fnRef_I82877f67d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement and the Organization of Consent, Universitat Pompeu Fabra, Economics and Business Working Paper Series 564, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?564). |
| [24](#co_fnRef_I82877f68d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement and the Organization of Consent, Universitat Pompeu Fabra, Economics and Business Working Paper Series 564, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?564). |
| [25](#co_fnRef_I8287a670d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement and the Organization of Consent, Universitat Pompeu Fabra, Economics and Business Working Paper Series 564, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?564). |
| [26](#co_fnRef_I8287a671d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement and the Organization of Consent, Universitat Pompeu Fabra, Economics and Business Working Paper Series 564, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?564). |
| [27](#co_fnRef_I8287a672d6ee11ea8f41e1f6f2aa78) | Arrunada, Property Enforcement and the Organization of Consent, Universitat Pompeu Fabra, Economics and Business Working Paper Series 564, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?564). |

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2 Title Ins. Law § 22:3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 22. Title Insurance on Property Outside the United States**

§ 22:3. Title insurance for countries with registration systems

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

[Section 22:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a2&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) suggested that, because of registers of rights’ conclusive nature, tract indices, and opportunity for claims to be heard before rights are registered, few title claims should occur in countries where the system functions properly. This section attempts to explain, first, why title insurance patterned closely after existing American policies would cover few of the claims that may be most likely to arise in countries with registration systems, and how the policies might be modified to insure more of the risks that concern investors. Second, this section attempts to explain the value that title insurance gives in countries with registration systems, nevertheless, because of (a) its promise to defend title; (b) its agreement to insure not only the priority but also the enforceability of mortgages; (c) its ability to assume existing risk to permit doubtful transactions to be closed; (d) its promise to indemnify beyond any cap on the registrar or government’s liability, up to the policy amount; (e) the speed and efficiency that its standardization contribute to the transaction process; and (f) the desirability to investment bankers and rating agencies of a standardized title assurance product for purposes of credit enhancement.

One of investors’ greatest concerns about investing in real property is the risk of government confiscation, with or without compensation. Additionally, both investors purchasing interests in land for purposes of locating a commercial venture and those investing in off-shore mortgage-backed-debt want protection against unregistered overriding interests,[1](#co_footnote_I8296e8b2d6ee11ea8f41e1f6f2a) including past taxes, land use regulations, public easements, conservation, and historic preservation rights. Investors may be almost as concerned about rights of previous owners who may still occupy the land and others’ use rights that could limit the use for which the investment was made. Yet, these types of overriding interests are excluded from coverage in standard American owner’s and lender’s title insurance policies and also, as the next section of this chapter illustrates, from most title insurers’ standard international policies available as of January 2002.

Closely linked to investors’ concern about the government taking property is their worry that titles issued or recognized by a current government may not be honored if that government is replaced. Investors certainly would be encouraged if indemnification against [**political risk**](http://practicallawconnect.thomsonreuters.com/Document/I1c631254ef2811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) were available. Standard American owner’s and lender’s title insurance policies and the standard international title policies available as 2002 dawned all exclude that risk from coverage.

The standard international policies available at the beginning of 2002 do all insure against title and lien claims other than those described in the preceding two paragraphs. Yet, as [§ 22:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a2&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) describes, the registration system itself should protect investors from unregistered claims, other than overriding interests. Once registered, the conclusiveness afforded to the register also negates the risk that an instrument in the [**chain of title**](http://practicallawconnect.thomsonreuters.com/Document/I2e45ae37642211e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) was legally insufficient to transfer title. Investors in land within the U.S. must worry that their title could be void or voidable because of facts that are not apparent on the face of the instrument. Such facts may include fraud, forgery, or duress in the execution of instruments affecting title to the insured land; false impersonation of the landowner; execution of instruments by a minor or an incompetent person; heirs not disclosed in the public records who have an interest in the land; wills not discovered before purported devisees conveyed their supposed interests in the title; improper notice of judicial proceedings given to those with interests in the land; deeds executed under powers of attorney subsequently declared to be invalid; undisclosed marriages and divorces which result in claims of marital property rights; and copyists’ and indexing errors.[2](#co_footnote_I82970fc2d6ee11ea8f41e1f6f2a) Yet, claims for such matters would be rarer in countries with registration systems. Also, when such allegations did arise, they likely would not be indemnified by standard American title insurance, for the following reasons.

First, an adverse claim should not succeed against the registered title; therefore, if title insurance insures the title as it is shown in the registry, then no unregistered adverse claim should succeed against the insured title and the insured could not suffer indemnifiable loss. For example, assume that “A” is identified in the registry as owner of Blackacre and A’s title as shown is insured. If A’s title is attacked on the basis that it depended on a forged document earlier in the chain of title, A’s title should prevail. A, thus, has no indemnifiable loss to be paid by title insurance. A’s title insurer should defend A’s title,[3](#co_footnote_I8298e480d6ee11ea8f41e1f6f2a) however, and the duty to defend offered by the [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is a significant value.

A second reason why fewer claims would arise and few of those would be indemnified by American-style title insurance is that, in most registration systems, registered owners are to be given notice before the registrar alters the registry in a way that affects their interests. If notice failed, however, and “A,” an insured registered owner, was divested of title by registration of a subsequent fraudulent transaction, A’s loss would be excluded by most policies’ exclusion for matters arising after the insured’s policy date. The risk of being deprived of one’s registered title by a post-policy fraudulent or erroneous transaction concerns investors in particular countries. Because it will occur rarely, title insurers could insure that risk on a casualty basis. As of January 2002, one European insurer does assume this risk in residential owner’s and lenders’ policies for Western Europe as does one American insurer in residential lenders’ policies offered in Australia.[4](#co_footnote_I82990b90d6ee11ea8f41e1f6f2a)

A third reason that some title losses would not be indemnified by American-style title insurance is that, if an interest shown in the register should be “corrected,” it generally will only be done if the party losing rights by the correction was not a bfp. Thus, if “A” is an insured title holder, and A is divested because A’s registered entry is “corrected,” the correction should only have been made if A was not a bfp. In that event, the exclusions in A’s title insurance policy for matters known by the insured and matters created, suffered, or assumed by the insured likely would bar coverage.

Not only should fewer covered title risks arise in a properly functioning register of rights than in U.S. states’ recording systems, but the registrar, along with the public notary in countries that use them, performs the title examination, conveyancing, and settlement work that title insurance agents do in most of the U.S.[5](#co_footnote_I82990b91d6ee11ea8f41e1f6f2a) Because approximately 90% of the title insurance premium in the U.S. goes toward the costs of examining title and eliminating risks,[6](#co_footnote_I82990b92d6ee11ea8f41e1f6f2a) where the insurer does not perform those functions, the insurer seemingly could charge a smaller premium or assume more risks.

Despite the fact that standard American-style title insurance would not cover the same risks in countries with registration systems as it does in the U.S., it still offers value to investors in those countries. First, in countries where the registration system does not function properly because (a) it is just beginning, (b) it is slow to process registration applications or unreliable for other reasons,[7](#co_footnote_I82990b94d6ee11ea8f41e1f6f2a) (c) it is conclusive in name only but overturned frequently for errors in practice, or (d) there is no realistic expectation that the registrar or anyone else at fault for an erroneous registration would or could pay the loss, then title insurance that covers these risks gives significant value. In order for commercial investors to be willing to either invest money in land in developing countries or accept borrowers’ land as collateral for loans, investors must believe that their investments are secure. Title insurance that is designed to verify the registry with an independent examination, assist with curative action, and insure the particular risks that concern investors in these countries can, therefore, encourage commercial investment and be a factor in these nations’ economic growth.[8](#co_footnote_I82990b95d6ee11ea8f41e1f6f2a)

Furthermore, if mortgage liens are sufficiently secure, interests in the repayment of mortgage-backed debt may be sold in the world’s securities markets, unlocking a source of capital that otherwise may not be available in developing countries. Thus, enhancing the land title security that a faltering land title registration system provides with the risk reduction services and promise of indemnification that private title insurance can offer may yield the boon of increased foreign investment and a market for a country’s mortgage-backed debt in the securities markets.[9](#co_footnote_I82990b96d6ee11ea8f41e1f6f2a) Even in countries with properly functioning registration systems, Standard & Poor’s investment analysts have recommended some type of title insurance for residential mortgage loans if portfolios are to be sold into the [**secondary market**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a3a51ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).[10](#co_footnote_I829932a0d6ee11ea8f41e1f6f2a) They believe that an insurer’s financial strength and the consistency of standard insurance policies serve as a credit enhancement[11](#co_footnote_I829932a1d6ee11ea8f41e1f6f2a) since recouping one’s investment will not depend on the title security and ability to indemnify provided by each country, county, and city’s individual registrar and system. Thus, in a country where the ability to securitize mortgage-backed debt is considered desirable, a standardized title assurance product adds that value.

Additionally, though registers of rights guarantee the priority of mortgages as registered, American title insurance policies traditionally also have insured the enforceability of a mortgage according to its terms. Title insurance that gives this additional security may permit lenders to more readily assign mortgages and debt. One European title insurer writes policies that continue in favor of the assignees of property owners as well, and suggests that they can help owners sell their property as well.[12](#co_footnote_I829932a2d6ee11ea8f41e1f6f2a)

Also, if affirmative insurance is available over existing clouds on a title, this may make a doubtful transaction sufficiently attractive to persuade a buyer to close or a lender to grant a loan.[13](#co_footnote_I829932a4d6ee11ea8f41e1f6f2a) Furthermore, the availability of casualty insurance over certain known risks could speed the closing of transactions.[14](#co_footnote_I829959b1d6ee11ea8f41e1f6f2a) When the rare claim does occur, in a country that places a cap on registry officials’ liability for negligence, title insurance also would pay the difference between such cap and the amount of an insured’s total loss.[15](#co_footnote_I829959b2d6ee11ea8f41e1f6f2a)

Standard American title insurance policies also provide that the insurer will pay court costs and attorney’s fees required to defend the insured title.[16](#co_footnote_I829959b3d6ee11ea8f41e1f6f2a) In countries with registration systems, policy language should clearly encompass a duty to defend in both judicial and administrative actions, in the event that title-clearing actions through the registrar’s office are in some places considered to be administrative.

Nevertheless, because in countries with properly functioning registration systems, title insurers may assume fewer risks, avoid the cost of maintaining title plants, and recover many losses they pay from the registrar or government, they likely can offer even more value than the initial versions[17](#co_footnote_I829959b5d6ee11ea8f41e1f6f2a) of their standard international policies give. As [§ 22:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a4&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) illustrates, some international title insurance policies being offered give more casualty coverage than others, at least for residential transactions. One example is First American’s policy for residential mortgage liens in Australia; it is in the nature of the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Expanded Coverage Residential Loan Policy.[18](#co_footnote_I829959b7d6ee11ea8f41e1f6f2a) A second example is the London & European Title Insurance Company’s (L&E) policies that were sold beginning around 2002 for residential properties in the U.K., France,[19](#co_footnote_I829980c4d6ee11ea8f41e1f6f2a) Spain, and Italy. Another model of casualty coverage for residential lenders and investors in mortgage-backed debt is mortgage impairment insurance that covers the risk of loss from borrower default resulting from a wide range of reasons, title defects being one of them.[20](#co_footnote_I829980c5d6ee11ea8f41e1f6f2a)

Title insurance, thus, can play a valuable role in countries with registers of rights, if it is written to complement the registration system and take into account the risks that exist and those that do not. The purpose of the next section is to consider what risks are covered by the initial versions of title insurance policies available for property outside the U.S. as of January 2002. The goal is for insurers and insureds to work together to design policies that most benefit purchasers, lenders, investors, insurers, and the countries where titles are being insured.

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| **Footnotes** | |
| [1](#co_fnRef_I8296e8b2d6ee11ea8f41e1f6f2aa78) | Described in [§ 22:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a2&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I82970fc2d6ee11ea8f41e1f6f2aa78) | *See* [§ 1:5](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a5&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [3](#co_fnRef_I8298e480d6ee11ea8f41e1f6f2aa78) | This author has seen cases, however, in which the insurer contended that if the insured could have no loss compensable under the policy, then the insurer also had no duty to defend. |
| [4](#co_fnRef_I82990b90d6ee11ea8f41e1f6f2aa78) | First American’s Residential Loan Protection Policy (2000) is the only policy form this author has seen as of January 2002 that covers post-policy modifications, encroachments, and acts of forgery that discharge, vary, or adversely affect the insured mortgage and causes the insured mortgage to lose its priority to another encumbrance, charge or lien. |
| [5](#co_fnRef_I82990b91d6ee11ea8f41e1f6f2aa78) | *See* Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 19 (2003).  [R]ecords are better organized than in the USA, especially because of the use of advanced tract indexes. Moreover, the closing of transactions is the preserve of notaries in most European countries, and in France and Belgium this is also the case for the production of title searches. For standard transactions, additional examination of title is probably fruitless. Title insurance is therefore limited to a complementary role, making up for deficiencies in the economic security of the current systems.  **…**  For example, when a mortgage is insured in the US the insurer has to check that there are no other prior mortgages. In Europe, this task is carried out for all transactions by other agents, mainly by the registers of rights. The insurer can therefore issue the policy in the expectation that, if a claim is made, it will be able to recover any loss because the State, the register or the registrar will be liable (or the notary public in the minority of countries, such as France, which record deeds instead of registering rights).  **…**  When insurers do not issue title reports, as in Europe, their role is limited to complementing the professional liability of those who issue reports and clear titles. |
| [6](#co_fnRef_I82990b92d6ee11ea8f41e1f6f2aa78) | *See* [§ 1:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a15&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [7](#co_fnRef_I82990b94d6ee11ea8f41e1f6f2aa78) | For example, Puerto Rico has a register of rights that purges any title defects before registration. However, reportedly, “it suffers considerable delays. After documents have been lodged (and have, therefore, gained priority) they still wait for years for the registrar’s review and eventual registration. As a result, validity of the lodgment entry has had to be extended to four years (a few weeks is usual in systems that function well). Insurance companies have stepped in to cover the risk during the period between lodgment and registration, mainly to meet the demand for security of investors in the US secondary mortgage market.” Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 10 (2003). |
| [8](#co_fnRef_I82990b95d6ee11ea8f41e1f6f2aa78) | Foreign investors who are willing to build factories and conduct businesses in developing countries bring new capital into these emerging economies and provide employment and tax revenue that will further economic growth. *See* generally de Soto, The Mystery of Capital (Bantam Press 2000); de Soto, The Other Path, p. 159 (Harper & Row 1989); Hanstad, [Designing Land Registration Systems for Developing Countries, 13 Am. U. Int’l. L. Rev. 647, 702 (1998)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0108818770&pubNum=0115964&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_115964_702&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_115964_702). |
| [9](#co_fnRef_I82990b96d6ee11ea8f41e1f6f2aa78) | *See also* Palomar, [Land Tenure Security as a Market Stimulator in China, 12 Duke J. Comp. & Int’l L. 7, 10–15 & 74 (Winter 2002)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=0287965235&pubNum=0101272&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=LR&fi=co_pp_sp_101272_10&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)#co_pp_sp_101272_10). |
| [10](#co_fnRef_I829932a0d6ee11ea8f41e1f6f2aa78) | Michaux and Gibson, Title Insurance in Australian and New Zealand RMBS Transactions,) available at: http://www.standardandpoors.com/ResourceCenter/Ratings Criteria/StructuredFinance/articles/169743f.htm (last visited Nov. 23, 2001). The authors write:  Standard and Poor’s, an objective credit analysis organization, posits that title insurance can provide a level of assurance to lenders, which is no less than that provided by traditional due diligence processes in the Australian and New Zealand markets, and which, in some circumstances, can offer lenders a significantly greater degree of risk protection. |
| [11](#co_fnRef_I829932a1d6ee11ea8f41e1f6f2aa78) | Michaux and Gibson, Title Insurance in Australian and New Zealand RMBS Transactions,) available at: http://www.standardandpoors.com/ResourceCenter/Ratings Criteria/StructuredFinance/articles/169743f.htm (last visited Nov. 23, 2001).  *See also* S&P Revises Its Title Insurance Criteria for RMBS, http://www.prnewswire.com (New York, Nov. 19, 2001). |
| [12](#co_fnRef_I829932a2d6ee11ea8f41e1f6f2aa78) | “Defective title insurance” sold in the U.K. continues in favor of the assignees of property owners as well as lenders. *See* discussion at [§ 22:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a6&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [13](#co_fnRef_I829932a4d6ee11ea8f41e1f6f2aa78) | Some commentators would add that title insurance in a country with a registration system serves as litigation insurance in the event that a claim is made against the insured, registered title or the event that an insured is taken out of title by an erroneous, subsequent registration and must sue the registrar for compensation. However, insurers frequently argue that where there is not a duty to pay, there is not a duty to defend. *See* [§ 11:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs11%3a1&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) Therefore, in the situations described earlier in this subsection and in [§ 22:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a6&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), where policy exclusions likely would bar coverage, insurers may contend that they have no duty to defend the title against such claims or pay litigation costs. |
| [14](#co_fnRef_I829959b1d6ee11ea8f41e1f6f2aa78) | In their marketing of title insurance in countries with registers of rights, both European and American title insurance companies stress increased speed and simplicity in the real estate transaction process more than they do additional security of title. *See* Arrunada, The Role of Title Insurance under Recording and Registration, Universitat Pompeu Fabra, Economics and Business Working Paper Series 565, December 2001 (http://www.econ.upf.es/cgi-bin/onepaper?565). Also in Working Paper Series of The Geneva Association, Etudes et Dossiers, no. 248, December 2001. |
| [15](#co_fnRef_I829959b2d6ee11ea8f41e1f6f2aa78) | Some attorneys feel safer about their own professional liability if they recommend title insurance where available, because, as one attorney has quipped, “Otherwise, my malpractice insurance may become the title insurance.” |
| [16](#co_fnRef_I829959b3d6ee11ea8f41e1f6f2aa78) | *See* [§§ 11:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs11%3a1&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) |
| [17](#co_fnRef_I829959b5d6ee11ea8f41e1f6f2aa78) | As of January 2002. |
| [18](#co_fnRef_I829959b7d6ee11ea8f41e1f6f2aa78) | The ALTA Expanded Coverage Residential Loan Policy (10/13/01) and ALTA Enhanced Coverage Homeowner’s Policy (10/17/98) are discussed at §§ [5:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a15&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [5:16](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a16&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at Appendix [E](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPE&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [E1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPE1&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [19](#co_fnRef_I829980c4d6ee11ea8f41e1f6f2aa78) | France actually uses a recordation of deeds system, but records are better organized than in the U.S., especially because of the use of advanced tract indexes. In France, the production of title searches and the closing of transactions is the preserve of public notaries. *See* Arrunada, Property Enforcement as Organized Consent, Journal of Law, Economics, and Organization, p. 10 (2003). |
| [20](#co_fnRef_I829980c5d6ee11ea8f41e1f6f2aa78) | *See* [§ 22:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs22%3a7&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* [§ 1:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a7&originatingDoc=If4f5fc926fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 22:4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 22. Title Insurance on Property Outside the United States**

§ 22:4. Comparison of title assurance/credit enhancement currently available

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fc956fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

It would not be fruitful to make a line-by-line comparison of the different policy forms here because they are evolving. Changes likely will be made by the time this chapter reaches readers. This section will simply note coverages that usually are offered and those that are excluded in the policy versions available at this writing.

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2 Title Ins. Law § 22:5 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 22. Title Insurance on Property Outside the United States**

§ 22:5. Comparison of title assurance/credit enhancement currently available—American title insurance underwriters’ international policies

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

To determine the status of each title before insuring, most American title insurance underwriters retain a local attorney in the country where the property is located for a report.[1](#co_footnote_I82b4a9e0d6ee11ea8f41e1f6f2a) Some American underwriters have agency agreements with local attorneys, while others have their own local branches or subsidiaries that employ lay conveyancers and attorneys as agents.

As of 2015, title insurance of some type was available through American title insurance underwriters in Canada, Australia, most countries of Central America, South America, and Europe.[2](#co_footnote_I82b4a9e1d6ee11ea8f41e1f6f2a) Title insurance may be obtained to cover titles in a few Asian countries, including Japan and South Korea,[3](#co_footnote_I82b4a9e2d6ee11ea8f41e1f6f2a) but excluding China.[4](#co_footnote_I82b4a9e3d6ee11ea8f41e1f6f2a)

Because international title insurance products and the companies offering them are constantly evolving, the most up-to-date information about what is available will be from title insurance underwriters themselves. American title insurance underwriters First American Title Insurance Company,[5](#co_footnote_I82b4a9e4d6ee11ea8f41e1f6f2a) Stewart Title Guaranty Company,[6](#co_footnote_I82b4a9e5d6ee11ea8f41e1f6f2a) and Fidelity National Global Solutions, the international arm of Fidelity National Title Group,[7](#co_footnote_I82b4a9e6d6ee11ea8f41e1f6f2a) all offer a standard international lenders policy and a standard international owner’s policy. First American and Stewart Title also have country-specific loan policy forms for several countries.

The international owner’s and lender’s policy forms that American title insurance underwriters have offered are modeled substantially after the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] standard owner’s and lender’s policies used in the United States. While the format of some policies’ insuring clauses has varied a little, the coverage offered has not varied significantly for different countries’ real estate laws and land title systems.[8](#co_footnote_I82b4a9e7d6ee11ea8f41e1f6f2a) Of course, individualization due to the land and the laws of particular countries may occur in underwriting decisions that appear later in Schedule B requirements and exceptions. Nevertheless, those who are accustomed to title insurance policies in America need to be aware that, even if the policy reads the same as the ALTA policies, the insurance coverage may not be exactly the same if the law of the country where the land is situated defines a landowner’s rights differently than does American law. For example, where a private title cannot include rights to minerals or natural resources because a nation reserves those rights to the government, the fact that the insurance policy does not contain an express limitation in the insuring clauses or an exclusion or exception for [**mineral rights**](http://practicallawconnect.thomsonreuters.com/Document/Id615fa0db8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) does not mean that those rights are insured, which the absence of such express exclusionary language might mean in the United States.

The first American standard international policies insured “legal” title, not “marketable” title, with the exception of policies designed for other common-law countries that recognize the concept of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), like England, Canada, Wales, and Australia.[9](#co_footnote_I82b4d0f0d6ee11ea8f41e1f6f2a) This probably was wise since the concept of marketable title has spawned significant litigation in the U.S.[10](#co_footnote_I82b4d0f1d6ee11ea8f41e1f6f2a) To introduce the term in countries that do not already have a body of law recognizing and construing it would be asking for litigation. Today, many more international policies include marketable title as a covered risk, but may define it in the policy with a more limited meaning than it has in American case law, ”such as the willingness of the title insurer to reissue.”[11](#co_footnote_I82b4d0f3d6ee11ea8f41e1f6f2a)

American underwriters’ international policies initially tended to limit their coverage of a registered title only against claims and defects that appear in the registry. Over time, however, they have begun giving more casualty insurance over undiscoverable defects. Potential insureds should be aware, however, that some underwriters’ policies seem to give full coverage in their insuring clauses, but then reduce that coverage with standard exceptions. For example, insuring clauses on the face of First American’s standard international policies issued in 2002 stated that they covered loss from restrictive covenants, easements or rights-of-way, et cetera; but, Schedule B then contained general exceptions for “Easements, rights of way, encumbrances and other matters affecting title which are not shown by the Public Records.”[12](#co_footnote_I82b4d0f4d6ee11ea8f41e1f6f2a) Stewart Title’s loan policy for Mexico in 2002 similarly excepted in Schedule B all “matters that are not recorded in the public records of property.”[13](#co_footnote_I82b4d0f5d6ee11ea8f41e1f6f2a) Other underwriters’ policies make this limitation clear in the insuring clauses themselves. For example, though the ALTA Loan policy has always insured against the priority of any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) over the lien of the insured mortgage, the parallel insuring clause in the international loan policy Lawyer’s Title offered in 2002 covered only the priority of any recorded lien or encumbrance over the lien of the insured mortgage.[14](#co_footnote_I82b4d0f6d6ee11ea8f41e1f6f2a) Similarly, the ALTA policy’s insuring clause for any defect in or lien or encumbrance on the title was limited in the same Lawyer’s Title international loan policy to cover any recorded defect in or lien or encumbrance.[15](#co_footnote_I82b4d0f7d6ee11ea8f41e1f6f2a) Likewise, though the ALTA Loan policy covers the failure of an assignment shown in the policy’s [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to vest title to the insured mortgage in the named assignee free and clear of all liens, the Lawyer’s Title’s international loan policy in 2002 insured only the failure of the assignment to vest title in the named assignee free and clear of all recorded liens.

At least one American underwriter’s international owner’s and loan policies as recently as 2009 gave no express coverage for this last risk, *i.e.*, the failure of an assignment shown in the policy’s Schedule A to vest title to the insured mortgage in the named assignee free and clear of all liens.[16](#co_footnote_I82b4f800d6ee11ea8f41e1f6f2a) This is surprising since that coverage would seem to be most important to lenders interested in assigning pools of mortgage loans to investors in securitized mortgage pools and to rating agencies. This international loan policy likely covers this risk, nevertheless, within its first broad insuring clause for “Title to the estate or interest described in Schedule A being vested other than as stated therein.”

Some international loan policies do not give the limited coverage of mechanic’s liens that ALTA policies do,[17](#co_footnote_I82b4f801d6ee11ea8f41e1f6f2a) and some owner’s policies do not cover the insured’s liability by reason of covenants of warranty made when transferring the title.[18](#co_footnote_I82b4f802d6ee11ea8f41e1f6f2a)

The conditions and stipulations sections of the policies especially resemble the ALTA policies. Like the ALTA policies, all these American underwriters’ international policies agree to pay costs, attorney’s fees, and other legal expenses incurred in defense of the title, except as limited by policy conditions and stipulations. Nevertheless, at least one underwriter has required a deductible[19](#co_footnote_I82b4f803d6ee11ea8f41e1f6f2a) that applies even to court costs, attorney’s fees, and other defense expenses. American title insurance policies have not generally required deductibles, with the exception of ALTA’s Homeowner’s Policy of Title Insurance For A One-to-Four Family Residence.[20](#co_footnote_I82b4f804d6ee11ea8f41e1f6f2a)

Most of the international policy forms since January 2002 also have contained the following preprinted exclusions and exceptions from Schedule B of ALTA standard owner’s and lender’s title insurance policies:[21](#co_footnote_I82b4f805d6ee11ea8f41e1f6f2a) (1) building, zoning, land use, and other governmental regulations, including exercises of governmental police power,[22](#co_footnote_I82b51f11d6ee11ea8f41e1f6f2a) and environmental laws;[23](#co_footnote_I82b51f13d6ee11ea8f41e1f6f2a) (2) eminent domain;[24](#co_footnote_I82b51f15d6ee11ea8f41e1f6f2a) (3) a lender’s violation of state “doing business” laws[25](#co_footnote_I82b51f17d6ee11ea8f41e1f6f2a) and usury laws;[26](#co_footnote_I82b51f19d6ee11ea8f41e1f6f2a) (4) mechanic’s liens;[27](#co_footnote_I82b54621d6ee11ea8f41e1f6f2a) (5) claims based on insolvency or creditors’ rights;[28](#co_footnote_I82b54624d6ee11ea8f41e1f6f2a) (6) encumbrance or title defects first created after the date of the policy and matters created or suffered by the insured or that were known to the insured and not in the public record; (7) claims of parties in possession not shown in the public records[29](#co_footnote_I82b54626d6ee11ea8f41e1f6f2a) and easements not of record;[30](#co_footnote_I82b54628d6ee11ea8f41e1f6f2a) and (8) boundary conflicts, encroachments, and other matters that an accurate survey or an inspection of the premises would reveal;[31](#co_footnote_I82b56d31d6ee11ea8f41e1f6f2a) among others.

In addition to the preceding undiscoverable matters, American title insurers’ international policies also have excluded or excepted the following, among others: (1) mineral and petroleum rights and other subsurface rights;[32](#co_footnote_I82b56d33d6ee11ea8f41e1f6f2a) (2) water rights and claims to natural resources;[33](#co_footnote_I82b56d34d6ee11ea8f41e1f6f2a) (3) aboriginal rights;[34](#co_footnote_I82b56d35d6ee11ea8f41e1f6f2a) (4) claims both (a) by third parties outside the country where the land is located and (b) relating to the interpretation or enforcement of the policy by a court or tribunal other than in the state where the insurer is domiciled;[35](#co_footnote_I82b56d36d6ee11ea8f41e1f6f2a) (5) war, insurrection, civil unrest, act of the public enemy, epidemic, governmental restriction, nationalization, act of God, “or other similar causes;”[36](#co_footnote_I82b56d37d6ee11ea8f41e1f6f2a) and (6) rights of [**expropriation**](http://practicallawconnect.thomsonreuters.com/Document/I0f9fe5cbef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), nationalization or resumption under the laws of the country in which the land is located, unless notice was of record at the policy date.[37](#co_footnote_I82b56d38d6ee11ea8f41e1f6f2a)

Regarding the right of “resumption” noted in the preceding exclusions, this is one of the few terms that does not come directly from ALTA policies used in the U.S. Insurers tend to have grouped “resumption” with the policy exclusions for eminent domain, nationalization, expropriation “or similar rights” of the country in which the land is located, unless notice of the exercise of the right has been recorded in the public records at the policy date. A right of “resumption” is not a legal term of art in the United States, but appears to be in some countries with land title registration systems. The statutes governing the land title registry systems of some of these countries expressly include “compulsory acquisition” and “resumption” as interests of the state that “override” the registered title.[38](#co_footnote_I82b56d39d6ee11ea8f41e1f6f2a) Was “resumption” added to the title insurance exclusions merely as a country-specific synonym for eminent domain? Or was it added on the recommendation of American title insurers’ international advisors because it was needed to separately exclude the state’s resumption of title *without* compensation to remedy an error or fraud resulting in the state’s registering title in a particular grantee? The 10th edition of Black’s Law Dictionary defines “resumption” as follows: “*English law*. The retaking by the Crown or other authority of lands or rights previously given to another, esp. as a result of false suggestion or other error.” Thus, in a country with a land title registration system, is “resumption” a modern legal right different from eminent domain that is needed to permit the correction of a transfer from the state made by mistake or pursuant to fraud? Yet, earlier editions of Black’s specify that this is an “Old English” definition of “resumption;” and the Oxford Dictionary provides a sentence using the term in the same way as Americans use “eminent domain.” So, has “resumption’s” archaic definition from the days of kings changed to be, modernly, no more than a synonym for eminent domain? The answer to these questions must come from the American title insurers’ international advisors, from land title registration system statutes of the country in which the land is located, or from authoritative, modern European research sources not available to this author. Where the issue might arise is in parts of Eastern Europe where land was confiscated, expropriated or otherwise taken from private owners before or after World War II.[39](#co_footnote_I82b59440d6ee11ea8f41e1f6f2a)

If the title is clouded because of a prior confiscation, a special exception to that effect likely will also be inserted in the policy’s Schedule B. James Gosdin reports that affirmative insurance after a particular confiscation sometimes has been sought,[40](#co_footnote_I82b59441d6ee11ea8f41e1f6f2a) and that title insurers have been willing to affirmatively insure titles when state restitution to prior owners of previously confiscated land is in the [**chain of title**](http://practicallawconnect.thomsonreuters.com/Document/I2e45ae37642211e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) so long as the potential insured is protected by either (a) a country’s laws pertaining to subsequent bona fide purchasers,[41](#co_footnote_I82b59442d6ee11ea8f41e1f6f2a) or (b) passage of the time period that any prior owner could have claimed restitution or recovery of the land.[42](#co_footnote_I82b59443d6ee11ea8f41e1f6f2a)

A few American title insurers’ international policies have country-specific exclusions as well, such as the exclusion in Stewart Title’s policy for Mexico for the possibility that land may be affected by revolutionary “ejido” rights.[43](#co_footnote_I82b59444d6ee11ea8f41e1f6f2a)

Many of the preceding risks are exactly the type that investors offshore most desire security against. Nevertheless, this area of title insurance is evolving. Reportedly, all the American underwriters are willing to negotiate at least some insurance over known title defects. Further, most of the above pre-printed exclusions and general exceptions bar claims for interests created operation of law or by possession which legally “override” the land title registry, and at least one American title insurer has been willing in limited locations to generally cover “overriding interests.”[44](#co_footnote_I82b59445d6ee11ea8f41e1f6f2a) Additionally, underwriters whose policies now limit coverage to matters shown in the land register may be willing to expand their casualty coverage for an extra fee by deleting the preprinted Schedule B exceptions or issuing affirmative endorsements as they do in most of the U.S. The underwriters also may offer separate policies for residential mortgage liens with more casualty coverage.[45](#co_footnote_I82b6ccc0d6ee11ea8f41e1f6f2a)

Potential insureds may want to consider whether it matters if the title insurance underwriter is licensed to “do business” in the country where the land is situated.[46](#co_footnote_I82b6f3d1d6ee11ea8f41e1f6f2a) Several American underwriters’ policies are written as contracts of insurance to be issued in the U.S. to American lenders or American owners. The land simply is elsewhere. Insureds must enforce the policies and have them interpreted in U.S. courts. Nevertheless, a claim against the insured title would be determined by the law of the country where the land is situated and the title would have to be defended in courts of that jurisdiction. The insurer likely would provide for the defense of the insured title by retaining a local attorney and paying attorney’s fees and other costs. Though the local attorney or official performs the local tasks, would authorities in the jurisdiction where the land is located question the American insurer’s ability to control the defense if the insurer is not licensed to “do business” there?

Care also must be exercised in defining the “insured” in the policy’s Schedule A. The parties should consider whether it would be a violation of “doing business” laws if a foreign entity were the “insured” in a policy insuring foreign land. On the other hand, if a foreign subsidiary of a U.S. corporation acquires land offshore, can the American parent be the named insured? If the American parent is the named insured, how does the parent establish its “loss” if the foreign subsidiary’s title fails?[47](#co_footnote_I82b6f3d2d6ee11ea8f41e1f6f2a) Is the insurer liable if the insured parent corporation’s “loss” is its inability to pursue business plans as a result of failure of the foreign entity’s title?[48](#co_footnote_I82b6f3d4d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I82b4a9e0d6ee11ea8f41e1f6f2aa78) | Blyth, International Title Insurance Policies, p. 12, (paper prepared for 2001 Practicing Law Institute seminars and shared with members of the American College of Real Estate Lawyers’ Subcommittee on International Title Assurance) (copy in author’s file). |
| [2](#co_fnRef_I82b4a9e1d6ee11ea8f41e1f6f2aa78) | Gosdin, Title Insurance: A Comprehensive Overview of the Law and Coverage, 4th Ed., p. 222-224 (ABA Section of Real Property Trust & Estate Law 2015). |
| [3](#co_fnRef_I82b4a9e2d6ee11ea8f41e1f6f2aa78) | Gosdin, Title Insurance: A Comprehensive Overview of the Law and Coverage, 4th Ed., p. 222-224 (ABA Section of Real Property Trust & Estate Law 2015). |
| [4](#co_fnRef_I82b4a9e3d6ee11ea8f41e1f6f2aa78) | In Fall of 2001, First American opened both an office in Hong Kong and a representative office in Beijing, People’s Republic of China, with the goal of obtaining a license for direct sales of title insurance in China, but such a license was never issued and First American eventually closed its Beijing office. |
| [5](#co_fnRef_I82b4a9e4d6ee11ea8f41e1f6f2aa78) | Blyth reports that, as of Summer 2001, First American offered title insurance in England, Scotland, Northern Ireland, Wales, The Republic of Ireland, Italy, Germany, France, Spain, South Korea, Singapore, Japan, Hong Kong, Antigua, Aruba, Bahamas, Barbados, British Virgin Islands, Dominican Republic, Jamaica, Puerto Rico, St. Lucia, Trinidad & Tobago, Turks & Caicos Island, U.S. Virgin Islands, Mexico, Australia, and Canada. Blyth, International Title Insurance Policies, p. 3, (paper prepared for 2001 Practicing Law Institute seminars and shared with members of the American College of Real Estate Lawyers’ Subcommittee on International Title Assurance) (copy in author’s file). A more complete listing may be found today on First American Title Insurance Company’s webpage, http://www.firstam.com/international-services/. |
| [6](#co_fnRef_I82b4a9e5d6ee11ea8f41e1f6f2aa78) | Stewart Title Guaranty Company’s Website makes copies available of policies that it sells in particular countries. Stewart began in December 2001 selling a product called Global Advantage Title. Blyth, International Title Insurance Policies, p. 4, (paper prepared for 2001 Practicing Law Institute seminars and shared with members of the American College of Real Estate Lawyers’ Subcommittee on International Title Assurance) (copy in author’s file). Stewart Title’s webpage in 2017 described its Global Advantage Title Owner and Lender policies as follows: “A GAT policy is especially tailored to meet the needs of individuals or companies participating in cross-border real estate transactions; the GAT policy is a contract of indemnity under U.S. law and provides many of the same or similar coverages Americans are used to getting in American transactions.” http://www.stewart.com/en/customer-type/international/products-and-services/types-of-policies.html. *See also* Creekmore, U.S. Financing on Mexican Residences and Crossing the Title Assurance Border in Mexico and other articles at http://www.stewart.com/international/inindex.htm (Dec. 5, 2001). |
| [7](#co_fnRef_I82b4a9e6d6ee11ea8f41e1f6f2aa78) | The Fidelity National Title Group acquired Lawyers Title Insurance Company which, according to Blyth, as early as 2001 had offered title insurance in South America, Central America (except El Salvador), Mexico, Bermuda, and the Caribbean Basin (except Cuba and Haiti). Blyth, International Title Insurance Policies, p. 3, (paper prepared for 2001 Practicing Law Institute seminars and shared with members of the American College of Real Estate Lawyers’ Subcommittee on International Title Assurance) (copy in author’s file).  Fidelity National Title Insurance Company also acquired Chicago Title Insurance Company and holds the copyright on the Chicago Title Insurance Company International Owner’s and Loan policies. Blyth, International Title Insurance Policies, p. 2, (paper prepared for 2001 Practicing Law Institute seminars and shared with members of the American College of Real Estate Lawyers’ Subcommittee on International Title Assurance) (copy in author’s file). |
| [8](#co_fnRef_I82b4a9e7d6ee11ea8f41e1f6f2aa78) | Of the American underwriters’ forms available to this author, First American’s original residential loan policy for Australia and some of Stewart Title’s early country-specific loan policies most incorporated title risks of the countries in which they were being issued into the policies’ terms. |
| [9](#co_fnRef_I82b4d0f0d6ee11ea8f41e1f6f2aa78) | As of January 2002, Stewart Title and First American’s policies for these countries covered unmarketability of the insured title. *See* Blyth, International Title Insurance Policies (paper prepared for 2001 Practicing Law Institute seminars and shared with members of the American College of Real Estate Lawyers Subcommittee on International Title Assurance) (copy in author’s file). |
| [10](#co_fnRef_I82b4d0f1d6ee11ea8f41e1f6f2aa78) | *See* [§ 5:6](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a6&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). *See also* Patton & Palomar on Land Titles 3rd ed., §§ 48 to 51. |
| [11](#co_fnRef_I82b4d0f3d6ee11ea8f41e1f6f2aa78) | Gosdin, Title Insurance: A Comprehensive Overview of the Law and Coverage, 4th Ed., p. 222 (ABA Section of Real Property Trust & Estate Law 2015). |
| [12](#co_fnRef_I82b4d0f4d6ee11ea8f41e1f6f2aa78) | *See* First American’s International Loan Policy (2/99) and International Owner’s Policy (2/99) (copies in author’s files). |
| [13](#co_fnRef_I82b4d0f5d6ee11ea8f41e1f6f2aa78) | *See* Stewart Title Guaranty Company’s 1992 Loan Policy for Mexico, http://www.stewart.com/forms (copy in author’s file). |
| [14](#co_fnRef_I82b4d0f6d6ee11ea8f41e1f6f2aa78) | *See* Lawyers Title Insurance Corporation International Loan Policy, p. 1 (copy provided to American College of Real Estate Lawyers in Summer 2001). Similarly, Stewart Title’s country-specific loan policies cover only easements upon the title that are recorded in the public property records. |
| [15](#co_fnRef_I82b4d0f7d6ee11ea8f41e1f6f2aa78) | This also is the case in Lawyers Title’s International Owner’s Policy. |
| [16](#co_fnRef_I82b4f800d6ee11ea8f41e1f6f2aa78) | *See* International Owner’s Title Indemnity Policy (4-3-2009) and International Loan Policy of Title Insurance (09/04) issued by Fidelity National Title Insurance Company. *See also* International Loan Policy of Title Insurance issued by Chicago Title (copyright 2001). |
| [17](#co_fnRef_I82b4f801d6ee11ea8f41e1f6f2aa78) | *See* International Loan Policy issued by First American Title Insurance Company (2/99); International Loan Policy of Title Insurance of Fidelity National Title Insurance Company (01/04). A Fidelity spokesperson stated that it did not give this coverage in its international policies because many countries do not recognize mechanic’s liens.  Stewart Title’s Loan Policy for Argentina that was available in 2002 and its 1992 Loan Policy for Mexico did cover mechanic’s liens for work and material furnished to the land before the date of policy, but due to a Schedule B pre-printed exception, only if they are registered before the policy date. |
| [18](#co_fnRef_I82b4f802d6ee11ea8f41e1f6f2aa78) | Stewart Title Guaranty Company’s 2012 Global Advantage Title Owner’s Policy, First American Title Insurance Company’s International Owner’s Policy (2/99) and Fidelity National Title Insurance Company’s International Owner’s Title Indemnity Policy (4-3-2009) do give warranty coverage. |
| [19](#co_fnRef_I82b4f803d6ee11ea8f41e1f6f2aa78) | *See* Lawyers Title Insurance Corporation International Loan Policy, p. 1 and Schedule C (copy provided to American College of Real Estate Lawyers in Summer 2001). |
| [20](#co_fnRef_I82b4f804d6ee11ea8f41e1f6f2aa78) | *See* ALTA’s Homeowner’s Policy of Title Insurance For A One-to-Four Family Residence (Rev. 1/01/08) in the Appendices to this treatise. |
| [21](#co_fnRef_I82b4f805d6ee11ea8f41e1f6f2aa78) | First American’s Residential Loan policy for Australia is an exception. While it contains some of these standard exclusions, it omits many others. It is more similar to the ALTA Expanded Coverage Residential Loan policy (*see* [§ 5:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a15&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [Appendix E1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPE1&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))) than to ALTA’s standard loan policy. |
| [22](#co_fnRef_I82b51f11d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Company Global Advantage Title Owner’s Policy (2012) & Lender’s Policy (2012); First American Title Insurance Company’s International Owner’s Policy (2/99) & Loan Policy (2/99); and Fidelity National Title Insurance Company International Owner’s Title Indemnity Policy (04/03/2009) & Loan Policy (01/04). *See generally supra* [§ 6:2](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a2&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [23](#co_fnRef_I82b51f13d6ee11ea8f41e1f6f2aa78) | *See supra* [§ 6:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a9&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [24](#co_fnRef_I82b51f15d6ee11ea8f41e1f6f2aa78) | Stewart Title Guaranty Company Global Advantage Title Owner’s Policy (2012) & Lender’s Policy (2012); Fidelity National Title Insurance Company International Owner’s Title Indemnity Policy (04/03/2009) & Loan Policy (01/04); First American Title Insurance Company’s International Owner’s Policy (2/99). *See generally supra* [§ 6:9](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a9&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [25](#co_fnRef_I82b51f17d6ee11ea8f41e1f6f2aa78) | *See e.g.*, First American Title Insurance Company International Owner’s Policy (2/99) & Loan Policy (2/99). *See generally supra* [§ 6:27](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a27&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [26](#co_fnRef_I82b51f19d6ee11ea8f41e1f6f2aa78) | *See e.g.*, First American Title Insurance Company International Owner’s Policy (2/99) & Loan Policy (2/99). *See generally supra* [§ 6:28](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a28&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [27](#co_fnRef_I82b54621d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Lender’s Policy—Urban (2012). *See generally supra* §§ [6:29](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a29&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), [7:13](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs7%3a13&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [28](#co_fnRef_I82b54624d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Lender’s Policy—Urban (2012) & Owner’s Policy—Urban (2012); First American Title Insurance Company International Owner’s Policy (2/99) & Loan Policy (2/99). *See generally supra* [§ 6:30](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a30&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [29](#co_fnRef_I82b54626d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Owner’s Policy—Urban (2012) & Lender’s Policy—Urban (2012); Fidelity National Title Insurance Company International Owner’s Title Indemnity Policy (04/03/2009). *See generally supra* [§ 7:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs7%3a3&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [30](#co_fnRef_I82b54628d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Owner’s Policy—Urban (2012) & Lender’s Policy—Urban (2012); Fidelity National Title Insurance Company International Owner’s Title Indemnity Policy (04/03/2009). *See generally supra* [§ 7:12](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs7%3a12&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [31](#co_fnRef_I82b56d31d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Owner’s Policy—Urban (2012) & Lender’s Policy—Urban (2012); Fidelity National Title Insurance Company International Owner’s Title Indemnity Policy (04/03/2009). *See generally supra* [§ 7:8](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs7%3a8&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise. |
| [32](#co_fnRef_I82b56d33d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Owner’s Policy—Urban (2012) & Lender’s Policy—Urban (2012); First American Title Insurance Company International Owner’s Policy (2/99) & Loan Policy (2/99). |
| [33](#co_fnRef_I82b56d34d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Owner’s Policy—Urban (2012) & Lender’s Policy—Urban (2012); Fidelity National Title Insurance Company International Owner’s Title Indemnity Policy (04/03/2009); First American Title Insurance Company International Owner’s Policy (2/99) & Loan Policy (2/99). |
| [34](#co_fnRef_I82b56d35d6ee11ea8f41e1f6f2aa78) | First American Title Insurance Company International Owner’s Policy, Exclusions ¶ 2 (2/99). |
| [35](#co_fnRef_I82b56d36d6ee11ea8f41e1f6f2aa78) | *See* First American Title Insurance Company International Owner’s Policy (2/99) & Loan Policy (2/99). |
| [36](#co_fnRef_I82b56d37d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Owner’s Policy—Urban (2012) & Lender’s Policy—Urban (2012). *See* First American Title Insurance Company International Owner’s Policy (2/1999) & Loan Policy (2/99). First American’s 1999 International Policy forms also generally “except” from coverage both: (1) taxes or assessments by any taxing authority and (2) riparian rights, changes in watercourses, submerged land or land that was formerly submerged, or filled or reclaimed lands. |
| [37](#co_fnRef_I82b56d38d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Stewart Title Guaranty Co. Global Advantage Title Owner’s Policy—Urban (2012); and Stewart Title Guaranty Company’s Loan Policy of Title Insurance on Mexico Land 1992; Fidelity National Title Insurance Company International Owner’s Title Indemnity Policy (04/03/2009); First American Title Insurance Company International Owner’s Policy, Exclusions ¶ 2 (2/99) & Loan Policy, Exclusions ¶ 2 (2/99). *See also* James L. Gosdin, *International Title Insurance Products*, p. 9 & 10 (March 2009) (presented at the American College of Real Estate Lawyers Spring 2009 meeting) for identification of rights of “resumption” in text discussing over-riding interests in Caribbean Region land title registration systems. |
| [38](#co_fnRef_I82b56d39d6ee11ea8f41e1f6f2aa78) | *See e.g.*, Gosdin, *International Title Insurance Products*, p. 9 & 10 (March 2009) (describing the state’s right of resumption as an overriding interest in Anguilla and the British Virgin Islands); Hammann & Calder, *International Title Insurance*, p. 7 (Handout of slides presented to the American College of Real Estate Lawyers 2008 including “Rights of resumption, expropriation or similar rights” as “representative additional exclusions”); Ronald Matende Omwoma, *Theoretical description of basic rationale and processes for land registrations*, p. 11 (Jan. 2017) at http://www.academia.edu/31075847/Theoretical\_description\_of\_basic\_rationale\_and\_processes\_for\_land\_registrations (describing the state’s right of resumption as an overriding interest in registry title systems generally and in Kenya). A Google search also will show a right of resumption mentioned as an overriding interest in the land registration systems of India, Hong Kong and other countries that patterned their systems after said system in the U.K. |
| [39](#co_fnRef_I82b59440d6ee11ea8f41e1f6f2aa78) | Gosdin, Title Insurance: A Comprehensive Overview of the Law and Coverage, 4th Ed., p. 223 (ABA Section of Real Property Trust & Estate Law 2015). |
| [40](#co_fnRef_I82b59441d6ee11ea8f41e1f6f2aa78) | Gosdin, Title Insurance: A Comprehensive Overview of the Law and Coverage, 4th Ed., p. 223 (ABA Section of Real Property Trust & Estate Law 2015). |
| [41](#co_fnRef_I82b59442d6ee11ea8f41e1f6f2aa78) | Gosdin, Title Insurance: A Comprehensive Overview of the Law and Coverage, 4th Ed., p. 223 (ABA Section of Real Property Trust & Estate Law 2015). |
| [42](#co_fnRef_I82b59443d6ee11ea8f41e1f6f2aa78) | Gosdin, Title Insurance: A Comprehensive Overview of the Law and Coverage, 4th Ed., p. 223 (ABA Section of Real Property Trust & Estate Law 2015). |
| [43](#co_fnRef_I82b59444d6ee11ea8f41e1f6f2aa78) | *See* Stewart Title Guaranty Company’s Loan Policy of Title Insurance on Mexico Land 1992. |
| [44](#co_fnRef_I82b59445d6ee11ea8f41e1f6f2aa78) | Stewart Title’s policy for the UK as early as 2002 expressly stated that it covered “overriding interests” and limited its exclusion of matters that would be disclosed by an inspection of the premises so that it would not exclude overriding interests. |
| [45](#co_fnRef_I82b6ccc0d6ee11ea8f41e1f6f2aa78) | These likely will follow the approach of the ALTA Expanded Coverage Residential Loan Policy (10/13/01). It is discussed at [§ 5:22](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a22&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at [Appendix E1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPE1&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [46](#co_fnRef_I82b6f3d1d6ee11ea8f41e1f6f2aa78) | The author wishes to attribute the ideas in this paragraph and the following paragraph to Sheldon Rubin and other members of the American College of Real Estate Lawyers during a conference call meeting of the Title Insurance Committee’s International Title Assurance Subcommittee. |
| [47](#co_fnRef_I82b6f3d2d6ee11ea8f41e1f6f2aa78) | Questions involving who should be the named insured in the context of corporations and their subsidiaries are considered. *See* [§ 4:4](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs4%3a4&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [48](#co_fnRef_I82b6f3d4d6ee11ea8f41e1f6f2aa78) | Similar questions are considered in §§ [6:18](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs6%3a18&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [10:3](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs10%3a3&originatingDoc=If4f5fc986fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 22:6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 22. Title Insurance on Property Outside the United States**

§ 22:6. Comparison of title assurance/credit enhancement currently available—Title insurance policies of insurers based outside the U.S

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fc9b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Two types of title insurance are offered by companies based outside the United States. The first type has long been available from multiple companies in the United Kingdom to cover individual title risks. It is available for both residential and commercial real estate and mortgage liens. It most often is purchased when defects or clouds in a [**chain of title**](http://practicallawconnect.thomsonreuters.com/Document/I2e45ae37642211e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) are known to exist, usually a lost deed or longstanding error in an instrument.[1](#co_footnote_I82c5c0e1d6ee11ea8f41e1f6f2a) This is similar to American title insurers charging an extra premium to insure over the risk of a minor title defect.[2](#co_footnote_I82c5c0e2d6ee11ea8f41e1f6f2a) These types of policies are described formally as “legal indemnity insurance,” though they sometimes are referred to generally as “defective title insurance.”

The applicant can apply for as limited or as full coverage as is needed for the particular property. Separate standard forms exist to insure each type of risk that the insurer normally covers. Some of the most commonly issued standard indemnities are for covenants of title, defective titles, lack of planning consent, lack of legal access, leasehold risks, restrictive covenants, missing beneficiaries, and deeds of gift avoided under the Insolvency Act.

The “Defective Title Indemnity Policy,” attached as an example at the end of this chapter,[3](#co_footnote_I82c5c0e3d6ee11ea8f41e1f6f2a) indemnifies the insured in the event that a third party attempts to enforce a property right or interest adverse to the insured title or to prevent the insured’s use of any right-of-way or easement necessary for the enjoyment of the property.[4](#co_footnote_I82c5e7f0d6ee11ea8f41e1f6f2a)

An owner, lessee, or mortgagee also can obtain separate policies to insure individually against loss from another’s enforcement of restrictive covenants, loss of access for ingress and egress, or loss of access for utility services. On the other hand, recently, a policy form has become available that covers all three of these common risks. A copy of the insuring language and schedule for an “Access Services and [**Restrictive Covenant**](http://practicallawconnect.thomsonreuters.com/Document/I1559f7bceef211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Indemnity Policy” is attached as an appendix to this chapter for reference.[5](#co_footnote_I82c5e7f1d6ee11ea8f41e1f6f2a)

The standard “Covenants for Title” Indemnity Policy covers the insured in the event that a third party attempts to “enforce a property right or interest adverse to or in derogation of the insured’s title” to the property.[6](#co_footnote_I82c5e7f3d6ee11ea8f41e1f6f2a) A difference from American title insurance is that if a property owner purchases this policy, the owner’s mortgagee and successors in title are automatically covered as well. Coverage runs in perpetuity and, like American title insurance, includes defense costs.

“Lack of Planning Consent Indemnity” insures against the local planning authority taking enforcement action.[7](#co_footnote_I82c5e7f4d6ee11ea8f41e1f6f2a) “Judicial Review Indemnity” covers in the event of an insured’s land use planning consent being made subject to a judicial review hearing and the insured’s intended development being prevented or delayed as a result.[8](#co_footnote_I82c5e7f5d6ee11ea8f41e1f6f2a)

“Defective Lease”— also called “Maisonette”—indemnity can be purchased either to insure mortgagees for loss as a result of the insured being unable to enforce the repair of adjoining dwellings or to insure both a borrower and mortgagee for the loss of market value attributable to the inability to enforce rights of support, protection, repair or access.

A long list of other title defects may be insured, including without limitation the following: access over common land; adverse possession; contaminated land, creeping freehold, flying freehold, incorrect power of attorney, judicial review, lack of architects’ certificate, lack of building regulation consent; lack of good root of title, lack of legal easements, lack of listed building consent, lack of planning consent, land registry delay, local authority purchase of property, lost bankers draft, lost documents, matrimonial homes act, [**mineral rights**](http://practicallawconnect.thomsonreuters.com/Document/Id615fa0db8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), obstruction of right of way, outstanding leasehold interest, outstanding mortgage interest, outstanding rights of common, rent charges indemnity, reversion risk, reverter of sites act, right of light, right of preemption, rights of turbury, right of way, road charges indemnity, school sites act, sewer indemnity, and undischarged mortgage.[9](#co_footnote_I82c7bcb0d6ee11ea8f41e1f6f2a) The purchaser, lender, or counsel may ask the insurer to help them determine on a case-by-case basis which of the particular indemnities they need.

The second type of title insurance that is available from companies based outside the U.S. is of more recent origin. This type of title insurance is patterned after American title insurance, with preprinted insuring clauses that give comprehensive title insurance coverage, subject, however, to preprinted exclusions and exceptions as well as typed-in exceptions for matters that are shown in the register that the insurer is not willing to cover. Thus, it covers numerous undiscoverable risks, in addition to providing affirmative insurance of discovered risks on a risk-by-risk basis like defective title insurance does.

London & European Title Insurance Services Ltd. (L&E) was the first to an offer such owner’s and lender’s title insurance policies in the United Kingdom, France, Spain, and Italy. In terms of risks covered and risks excluded, L&E’s original policies fell in between the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) standard owner’s and lender’s policies[10](#co_footnote_I82c7e3c0d6ee11ea8f41e1f6f2a) and the ALTA expanded coverage policies for residential owners and lenders.[11](#co_footnote_I82c7e3c1d6ee11ea8f41e1f6f2a) Like the ALTA expanded residential policies, these L&E policies expressly covered restrictive covenants, adverse possession, undocumented rights-of-way, and several other risks not covered in standard ALTA policies or the American title insurers’ international owner’s and loan policies.[12](#co_footnote_I82c7e3c5d6ee11ea8f41e1f6f2a) In addition, however, these policies also insured “overriding interests”—*i.e.*, interests not shown in the land registry which every purchaser must take subject to due to possession or operation of law. Examples include rights of parties in possession and unrecorded easements for access, light and air. The policies varied somewhat for the countries in which they were issued in terms of exclusions. For example, in Spain, 2002 residential policy versions excluded “tacit mortgages in favor of the State, Social Security and employees.”[13](#co_footnote_I82c7e3c6d6ee11ea8f41e1f6f2a)

A difference that insureds with ALTA policies would envy was the promise in the L&E policy to either cure title problems or pay the claim “within six months” after the claim is filed. The L&E residential owner’s policy also expressly limited coverage to the property’s market value as of the policy date, rather than its value when the defect was discovered, avoiding the frequent litigation in the U.S. over this issue. In addition to the insuring clauses and preprinted exclusions, these policies contained a Schedule B as in ALTA policies in which the insurer could specifically except title defects from coverage that the land register revealed. A unique use of Schedule B in the L&E Owner’s policy was to provide affirmative casualty coverage over most risks for which “defective title insurance” could be purchased, i.e., avoidance of a deed of gift; defective lease; lack of documentary right of way or support; restrictive covenants, and rights of adverse possession. Any other discovered defects would be underwritten individually.

As of 2017, Titlesolv is the trading name for London & European Title Insurance Services Ltd.[14](#co_footnote_I82c80ad0d6ee11ea8f41e1f6f2a) Titlesolv advertises that with its “Perfect Title Insurance” the insured still “is not required to prove a loss and all claims are settled within six months, under our unique ‘cure or pay’ promise.”[15](#co_footnote_I82c80ad1d6ee11ea8f41e1f6f2a) Titlesolv’s marketing emphasizes the ability of its title insurance products to (a) enhance the speed, simplicity and security of property transactions, (b) provide “a true guarantee, rather than a mere indemnity;” and (c) provide greater security than a land registry’s Certificate of Title by adding insurance “against threats such as fraud, forgery, undue influence and negligence.”[16](#co_footnote_I82c80ad2d6ee11ea8f41e1f6f2a)

Another European title insurer is Secure Legal Title Limited.[17](#co_footnote_I82c80ad3d6ee11ea8f41e1f6f2a) Well-known U.S. title insurance underwriter, Janice Carpi, who worked with Lawyers Title Insurance Company for years, is one of Secure Legal Title Limited’s underwriters for international title insurance in Europe.

Agents’ fees reportedly are lower than on policies in the U.S. because the title insurance underwriter can rely on the work of the registrar or public notary in examining title, on the conclusiveness of the registry, and on the registrar or notary’s liability for negligence in the UK, Spain, France,[18](#co_footnote_I82c80ad4d6ee11ea8f41e1f6f2a) and Italy.[19](#co_footnote_I82c80ad5d6ee11ea8f41e1f6f2a) The title insurance agent does not need to examine the documents in the registry file for [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), work with the purchaser or lender to eliminate risks before the closing of the transaction, or maintain private title plants. Instead, the title insurer simply has a solicitor or licensed conveyancer (1) confirm ownership and the description of the property with the land registry; (2) determine any existing charges against the property according to the land charges registry and local authorities; and (3) do a bankruptcy search.[20](#co_footnote_I82c80ad6d6ee11ea8f41e1f6f2a)

In 1997, the practicing bar in Ontario, Canada, began offering its own title insurance to residential purchasers and mortgagees. Lawyers Professional Indemnity Co. (LPIC) is owned by the governing body of the legal profession in Ontario, The Law Society of Upper Canada.[21](#co_footnote_I82c80ad7d6ee11ea8f41e1f6f2a) LPIC offers a complementary insurance product called “TitlePlus.” “TitlePlus” supplements attorneys’ malpractice insurance and the registry’s liability for negligence by providing no-fault errors and omissions insurance. Like the ALTA residential policies, TitlePlus covers zoning and it even covers utility arrears and tax arrears that are not insured by the ALTA residential owner’s and lender’s policies.[22](#co_footnote_I82c80ad8d6ee11ea8f41e1f6f2a) It is reported that a commercial Canadian insurance underwriter obtained a license to sell title insurance in Canada as well.[23](#co_footnote_I82c831e0d6ee11ea8f41e1f6f2a)

Business developments like international title insurance evolve so quickly and continually that real estate attorneys and title insurance underwriters themselves are a better source of up-to-date facts than this legal treatise on title insurance law. Therefore, this author cannot guarantee, warrant or represent the accuracy, adequacy, or completeness of any information herein and shall not be responsible for any errors or omissions or for the results obtained from the use of such information. If legal advice is required, the services of one’s own attorney should be sought.

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| [1](#co_fnRef_I82c5c0e1d6ee11ea8f41e1f6f2aa78) | Arrunada, The Role of Title Insurance under Recording and Registration, Universitat Pompeu Fabra, Economics and Business Working Paper Series 565, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?565). Also in Working Paper Series of The Geneva Association, Etudes et Dossiers, no. 248, December 2001. |
| [2](#co_fnRef_I82c5c0e2d6ee11ea8f41e1f6f2aa78) | Arrunada, The Role of Title Insurance under Recording and Registration, Universitat Pompeu Fabra, Economics and Business Working Paper Series 565, December 2001. (http://www.econ.upf.es/cgi-bin/onepaper?565). Also in Working Paper Series of The Geneva Association, Etudes et Dossiers, no. 248, December 2001. |
| [3](#co_fnRef_I82c5c0e3d6ee11ea8f41e1f6f2aa78) | *See* [Appendix 22A](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP22A&originatingDoc=If4f5fc9b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [4](#co_fnRef_I82c5e7f0d6ee11ea8f41e1f6f2aa78) | Countrywide Legal Indemnities, Technical Brief www.countrywidelegal.co.uk (last visited December 2001). |
| [5](#co_fnRef_I82c5e7f1d6ee11ea8f41e1f6f2aa78) | *See* [Appendix 22B](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPP22B&originatingDoc=If4f5fc9b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [6](#co_fnRef_I82c5e7f3d6ee11ea8f41e1f6f2aa78) | The source of this information is advertising flyers and policy forms produced by Countrywide Legal Indemnities of the UK. *See also* their Web page at www.countrywidelegal.co.uk (last visited January 15, 2002). |
| [7](#co_fnRef_I82c5e7f4d6ee11ea8f41e1f6f2aa78) | The source of this information is advertising flyers and policy forms produced by Countrywide Legal Indemnities of the UK. *See also* their Web page at www.countrywidelegal.co.uk (last visited January 15, 2002). |
| [8](#co_fnRef_I82c5e7f5d6ee11ea8f41e1f6f2aa78) | Countrywide Legal Indemnities, Technical Brief at www.countrywidelegal.co.uk (last visited December 2001). |
| [9](#co_fnRef_I82c7bcb0d6ee11ea8f41e1f6f2aa78) | The source of this information is advertising flyers and policy forms produced by Countrywide Legal Indemnities of the UK. *See also* their Web page at www.countrywidelegal.co.uk (last visited January 15, 2002). |
| [10](#co_fnRef_I82c7e3c0d6ee11ea8f41e1f6f2aa78) | Reproduced at Appendix 22C and 22D. This author continues to reproduce L&E’s 01/2002 policies because they still will be effective for owners and lenders who purchased them shortly after 2002. In 2017, however, this author reduced the text of this chapter describing said policies’ terms because American attorneys and title insurance professionals using this book likely are more interested in what coverage currently is available, which is best obtained from the company. http://www.titlesolv.com/solutions/. |
| [11](#co_fnRef_I82c7e3c1d6ee11ea8f41e1f6f2aa78) | The ALTA expanded policies for residential owners and lenders are discussed at [§ 5:15](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs5%3a15&originatingDoc=If4f5fc9b6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and reproduced at Appendices [E](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPE&originatingDoc=If4f5fc9b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) and [E1](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLAPPE1&originatingDoc=If4f5fc9b6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) of this treatise at the end of Volume 2. |
| [12](#co_fnRef_I82c7e3c5d6ee11ea8f41e1f6f2aa78) | *See* Webster, Title Insurance Set for Growth in the UK, available at http://www.insurance-first.com/Placed%20stories/July/27/title.htm (last visited December 2001). |
| [13](#co_fnRef_I82c7e3c6d6ee11ea8f41e1f6f2aa78) | Arrunada, The Role of Title Insurance in Markets with Registration of Rights, p. 11, (presented at the 9th Joint Seminar of EALE and the Geneva Association, Copenhagen, April 5-6 2001). |
| [14](#co_fnRef_I82c80ad0d6ee11ea8f41e1f6f2aa78) | http://www.titlesolv.com/about-us/. |
| [15](#co_fnRef_I82c80ad1d6ee11ea8f41e1f6f2aa78) | http://www.titlesolv.com/solutions/. |
| [16](#co_fnRef_I82c80ad2d6ee11ea8f41e1f6f2aa78) | http://www.titlesolv.com/solutions/. |
| [17](#co_fnRef_I82c80ad3d6ee11ea8f41e1f6f2aa78) | www.SecureLegalTitle.com. |
| [18](#co_fnRef_I82c80ad4d6ee11ea8f41e1f6f2aa78) | France actually uses a recordation of deeds system, but records are better organized than they historically were in the U.S., especially because of the use of advanced tract indexes. In France, the production of title searches and the closing of transactions is the preserve of public notaries. *See* Arrunada §§ 3:1 to 3:3 The Enforcement of Property Rights: Comparative Analysis of Institutions Reducing Transaction Costs in Real Estate, p. 19 (mimeo, 10th AREUEA Annual International Real Estate Conference, Cancun, May 6–8, 2001). |
| [19](#co_fnRef_I82c80ad5d6ee11ea8f41e1f6f2aa78) | Arrunada, The Role of Title Insurance in Markets with Registration of Rights, p. 13 (presented at the 9th Joint Seminar of EALE and the Geneva Association, Copenhagen, April 5–6 2001). |
| [20](#co_fnRef_I82c80ad6d6ee11ea8f41e1f6f2aa78) | *See* Webster, Title Insurance Set for Growth in the UK, available at http://www.insurance-first.com/Placed%20stories/July/27/title.htm (last visited December 2001). |
| [21](#co_fnRef_I82c80ad7d6ee11ea8f41e1f6f2aa78) | The Law Society of Upper Canada. |
| [22](#co_fnRef_I82c80ad8d6ee11ea8f41e1f6f2aa78) | *See* http://www.titleplus.ca. |
| [23](#co_fnRef_I82c831e0d6ee11ea8f41e1f6f2aa78) | Letter to Mr. Sheldon Rubin from Mr. Bruce A. McKenna re Canadian Title Insurance Update, p.2 (June 4, 2001) (copy in author’s file). |

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2 Title Ins. Law § 22:7 (2020 ed.)

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**Chapter 22. Title Insurance on Property Outside the United States**

§ 22:7. Comparison of title assurance/credit enhancement currently available—Mortgage impairment insurance model

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fc9e6fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Mortgage impairment insurance is sold for credit enhancement purposes to home equity lenders to insure junior home equity loans and to refinancing lenders to cover portfolios of mortgages being sold into the secondary mortgage market.[1](#co_footnote_I82d35570d6ee11ea8f41e1f6f2a) This type of insurance also may be called “equity insurance” or “lending activities insurance.”[2](#co_footnote_I82d35572d6ee11ea8f41e1f6f2a) Some mortgage impairment policies are written as master policies covering all of a particular insured’s mortgage liens up to a maximum amount. Other policies insure an entire mortgage portfolio.

Mortgage impairment insurance protects the holder of a mortgage broadly against losses resulting from the borrower’s default. Some of these policies have attempted to expressly include within their coverage losses that occur because of title defects. In the U.S., however, state laws regulating title insurance and title insurers in the past have blocked mortgage impairment insurers from including title insurance within their policies’ coverage.[3](#co_footnote_I82d35573d6ee11ea8f41e1f6f2a) Most states require a separate license to sell title insurance and impose numerous special regulations that mortgage impairment insurers are not prepared to meet—for example, requirements that an underwriter of title insurance can sell no other type of insurance and requirements that title insurance underwriters own or have guaranteed access to private title plants.[4](#co_footnote_I82d35574d6ee11ea8f41e1f6f2a) These types of regulations do not exist in countries besides the U.S. and, therefore, mortgage impairment insurers may be able to include losses resulting from title defects in their policies that insure entire pools of mortgages. At least one company has stated its intention to sell such an insurance product outside the U.S.

Standard & Poor’s financial analysts announced in 2001 that they would accept a mortgage pool policy in lieu of title insurance on residential mortgage loans in [**residential mortgage-backed securities**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a10ffef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) transactions.[5](#co_footnote_I82d37c81d6ee11ea8f41e1f6f2a) Standard & Poor’s considered that this type of insurance could expedite the loan origination process and reduce costs to borrowers. Commenting particularly on the title insurance alternative “Radian Lien Protection,” created by Radian Guaranty, Inc., Standard & Poor’s concluded that the process that Radian intended to utilize to check the status of title, coupled with the insurance policy, “adequately compensates investors for the lack of a [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).”[6](#co_footnote_I82d37c82d6ee11ea8f41e1f6f2a)

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| **Footnotes** | |
| [1](#co_fnRef_I82d35570d6ee11ea8f41e1f6f2aa78) | *See* discussion at [§ 1:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a7&originatingDoc=If4f5fc9e6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |
| [2](#co_fnRef_I82d35572d6ee11ea8f41e1f6f2aa78) | *See* Gosdin, Title Insurance 2nd ed., p. 35 (2000). |
| [3](#co_fnRef_I82d35573d6ee11ea8f41e1f6f2aa78) | In March 2005, the California Court of Appeal for the First District held that one provider of mortgage impairment insurance, Radian Guaranty, Inc., was properly ordered to stop selling its lien protection policy because its coverage for loss from undisclosed liens was title insurance. Insuring both a mortgage guaranty risk and a title risk violated the monoline insurance regulation that the State imposed on title insurers. [Radian Guaranty, Inc. v. Garamendi, 127 Cal. App. 4th 1280, 26 Cal. Rptr. 3d 464 (1st Dist. 2005)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&serNum=2006393773&pubNum=0007047&originatingDoc=If4f5fc9e6fac11d98776f22b20adbd85&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). In January, 2004, the California Superior Court upheld the California Insurance Commissioner’s cease-and-desist order against one provider of mortgage impairment insurance, Radian Guaranty, Inc., prohibiting Radian from selling title insurance without being licensed to do so. Radian’s Web site had advertised its product “Radian Lien Protection” as a “a title insurance alternative for less than half the cost” “designed to simplify and shorten closing time.” http://www.radianmi.com/content/products/ecom/prod\_ecom8\_frame.asp (Dec. 3, 2001). Similar actions by state insurance commissions also have stopped issuance of such insurance products in the United States in the past. |
| [4](#co_fnRef_I82d35574d6ee11ea8f41e1f6f2aa78) | *See* [§§ 18:1 et seq.](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs18%3a1&originatingDoc=If4f5fc9e6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) on state regulation of title insurance. |
| [5](#co_fnRef_I82d37c81d6ee11ea8f41e1f6f2aa78) | S&P Revises Its Title Insurance Criteria for RMBS, http://www.prnewswire.com (New York, Nov. 19, 2001). |
| [6](#co_fnRef_I82d37c82d6ee11ea8f41e1f6f2aa78) | S&P Revises Its Title Insurance Criteria for RMBS, http://www.prnewswire.com (New York, Nov. 19, 2001). *See* discussion at [§ 1:7](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSLs1%3a7&originatingDoc=If4f5fc9e6fac11d98776f22b20adbd85&refType=NA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)). |

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2 Title Ins. Law § 22:8 (2020 ed.)

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§ 22:8. Conclusion

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=If4f5fca16fac11d98776f22b20adbd85&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

In countries where (a) the registration system is just beginning, (b) the registration system is slow to process registration applications or unreliable for other reasons, (c) the registration system is conclusive in name only, but overturned frequently for errors in practice, or (d) there is no realistic expectation that the registrar or anyone else at fault for an erroneous registration would pay the loss, then title insurers offer significant value when they verify the registry, help to cure title defects, and insure the risks that most concern investors.

In countries where the register of rights functions properly, purchasers and lenders should consider their goals for title assurance. If the goal is a [**title search**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf1921f3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and examination, the registry may perform that function. If the goal is insurance against overriding interests or insurance in the event that title is lost due to governmental or political change, the investor should make sure that the policy being purchased does not exclude or except such risks. If the goal is primarily indemnification if the investment is lost due to title defects, the investor should remember that, because of the register of rights’ conclusive nature, title defects will be rarer statistically than in the U.S., and the registration system may already provide assurance against the registrar’s misfeasance or negligence. If the investor is a residential mortgage lender whose goal is speedier residential transactions, indemnification if mortgages are not enforceable, or credit enhancement of portfolios of residential mortgage loans, then those goals may be met by lenders’ title insurance policies purchased by each borrower; though it is possible those goals also might be met in the future by a mortgage impairment insurance policy that covers a portfolio of mortgages on a casualty basis. What title insurance unquestionably does add that is not available from other sources is litigation insurance, insurance of the enforceability of commercial lenders’ mortgages as well as their priority, and insurance amounts equal to insureds’ investments, unlimited by any cap on what the registrar or government must reimburse.

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2 Title Ins. Law Appendix 22A (2020 ed.)

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Appendix 22A. Defective Title Indemnity Policy

DEFECTIVE TITLE INDEMNITY POLICY

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| Countrywide Legal Indemnities Co. | (Wording Available 01/25/2001) |
|  |  |

DEFECTIVE TITLE INDEMNITY POLICY

This Policy and Schedule shall be read together and any word or expression to which a specific meaning has been attached in either shall bear such meaning wherever it may appear.

WHEREAS

1. By a proposal and particulars in writing (which it is agreed shall be the basis of this contract and shall be held to be incorporated herein) the Insured has applied to the Underwriters for the indemnity hereinafter expressed and has paid or agreed to pay the Single Premium as consideration for such indemnity

2. The Insured is or is about to become the owner lessee or mortgagee of the Property the title to which may be considered defective by reason of the Defect

IT IS HEREBY AGREED THAT subject to the terms of this policy the Underwriters will in respect of claims made during the period of insurance indemnify the Insured against all loss damages costs and expenses which the Insured may incur if the Insured’s claim to ownership of the title to and enjoyment of the Property or any part thereof (subject save as may be recorded elsewhere in the Policy to the rights covenants liabilities or easements to which the Property is or shall hereafter become subject) is prejudiced challenged or defeated by reason of the Defect stated in the Schedule.

In dealing with any claim the Underwriters will at their discretion be entitled to:

a) take or defend in any Court or Tribunal in the name of the Insured any proceedings arising out of such claim

b) exercise in the name of the Insured any rights or remedies available to the Insured in such proceedings including the right to abandon or submit to judgement

c) compromise settle or compound any such claim

d) deal with such claim in such manner as they think fit

PROVIDED however that before exercising their power to abandon proceedings or submit to judgement in proceedings or compromise settle or compound any claim the Underwriters shall inform the Insured of their intentions and give the Insured reasonable opportunity to comment thereon

1. Regardless of the number of claims that may be made against the Insured during the Period of Insurance the total amount payable by the Underwriters under this policy shall not exceed in the aggregate the Limit of Indemnity

2. The Insured shall at all times comply with the requirements of the Conditions hereinafter set out.

CONDITIONS

1. Upon becoming aware of any occurrence affecting the risk insured against or likely to give rise to a claim under this policy the Insured shall not admit any liability nor take any steps to compromise or settle any claim without the consent in writing of the Underwriters but shall with all due diligence give to the Underwriters particulars in writing of such occurrence and shall thereupon give all due and proper information and assistance to the Underwriters or their solicitors agents or surveyors in or about the conduct of any proceedings which the Underwriters may think fit to take at their own expense either in the name of the Insured or in the name of the Underwriters (whether before or after settlement of any claim) including any steps the Underwriters may wish to take for the purpose of enforcing any rights seeking any remedies or obtaining any relief indemnity or contribution from any other party or parties to which the Underwriters may be or become entitled by right of subrogation or otherwise upon payment or satisfaction of any claim under this policy.

2. If any step action or proceedings by any third party likely to give rise to a claim under this policy shall be induced either wholly or partly by or through any act or omission of the Insured (save as may already have occurred and be recorded in this policy or schedule) this policy shall be void.

3. If at the time of any claim made under this policy there be any other insurance or insurances subsisting (whether effected by the Insured or by any other person) under which the Insured may be entitled to make a claim wholly or partly in respect of the same risk or interest covered by this policy the Underwriters shall be liable to pay or contribute in respect of such claim ratably with such other insurance or insurances.

4. If any difference shall arise as to the amount to be paid under this policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions in that behalf for the time being in force. Where any difference is by this condition to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Underwriters.

5. Unless it is specifically agreed between the Underwriters and the Insured to the contrary this insurance shall be governed by English law.

6. The existence of this indemnity or any information relating thereto shall not be disclosed to any third party other than bona fide purchasers their mortgagees and lessees and their respective professional advisers without the prior written consent of the Underwriters.

MORTGAGEES AND SUCCESSORS IN TITLE CLAUSE

Notwithstanding anything contained herein to the contrary the interest of any mortgagee or chargee or successor in title to the original Insured in this Policy shall not be prejudiced by any act or default of any party (not being such mortgagee or chargee or successor) which might otherwise invalidate or reduce the indemnity provided by this Policy.

DEFECTIVE TITLE INDEMNITY SCHEDULE

|  |  |
| --- | --- |
| Policy Number: | Single Premium: |
|  | Insurance Premium Tax: |
|  | Total Taxed Premium: |

|  |  |
| --- | --- |
| The Underwriters: | LIBERTY LEGAL INDEMNITIES |
|  | Underwritten by Syndicate 190 at Lloyd’s |
|  |  |
|  |  |
| The Insured: | and the Insured’s successors in title (including mortgagees and lessees) to the Property or any part or parts thereof all of whom shall be bound by the terms conditions and provisions of this policy. |
|  |  |
| The Property: |  |
|  |  |
| The Defect: |  |
|  |  |
| Limit of Indemnity: |  |

|  |  |  |
| --- | --- | --- |
|  | Date of Commencement: |  |
|  | Expiry Date: | The period commencing with the Date of Commencement and continuing in perpetuity. |
|  |  |  |
|  |  |  |
|  |  |  |
| Date Policy Signed: |  |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed for and on behalf

of the Underwriters

Issued by: -

Countrywide Legal Indemnities Limited

For and on behalf of

Liberty Legal Indemnities

St Crispins

Duke Street

Norwich

Norfolk NR3 1PD

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2 Title Ins. Law Appendix 22B (2020 ed.)

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[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=Iba2353524bfc11daac9f8f8d3fbf89fa&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Appendix 22B. Access Services & Restrictive Covenant Indemnity Policy

ACCESS SERVICES & [**RESTRICTIVE COVENANT**](http://practicallawconnect.thomsonreuters.com/Document/I1559f7bceef211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) INDEMNITY POLICY

|  |  |
| --- | --- |
| Countrywide Legal Indemnities Co. | (Wording Available 01/25/2001) |
|  |  |

ACCESS SERVICES AND RESTRICTIVE COVENANT INDEMNITY POLICY

This Policy and Schedule shall be read together and any word or expression to which a specific meaning has been attached shall bear such meaning wherever it may appear

WHEREAS

1. By a proposal and particulars in writing (which it is agreed shall form the basis of this contract and shall be held to be incorporated herein) the Insured has applied to the Underwriters for the indemnity hereinafter expressed and has paid or agreed to pay the Single Premium as consideration for such indemnity

2. The Insured is or is about to become the owner lessee or mortgagee of the Property.

3. The Insured’s title to the Property is considered to be defective by reason of the Defect

4. It is apprehended that the Development may be in breach of the Restrictive Covenants

IT IS HEREBY AGREED THAT subject to the terms of this Policy the Underwriters will

A. in the event of any person(s) or corporation

a) establishing ownership of and preventing or attempting to prevent the Insured’s user of the Access serving the Property and/or

b) establishing ownership of the land under over or through which the Services pass and preventing or attempting to prevent the Insured’s user of the Services during the period of insurance the Underwriters will indemnify the Insured against

i) damages including costs and expenses awarded against the Insured by a court of law

ii) costs and expenses incurred by the Insured with the agreement of the Underwriters in taking or defending any action at law or otherwise

iii) loss in value of the Property being the difference between the value of the Property immediately prior to and immediately following the Insured’s user being prevented

iv) the cost of obtaining an alternative access way and/or route for services

v) the cost of obtaining a legal grant of right of way and/or easement for services

B. in the event of any person(s) or corporation claiming to be entitled to enforce the Restrictive Covenants during the period of insurance indemnify the Insured against

i. the expense of and incidental to defending or prosecuting any legal proceedings in any court or tribunal of competent jurisdiction arising out of any claim whether such proceedings are brought by the person making the claim or in the name of the Insured

ii. any sums agreed by the Underwriters with the claimant as payable by the Insured for the purpose of settling any proceedings or compromising settling or compounding any such claim

iii. any damages and costs awarded against the Insured in any such proceedings by any such court and any compensation and costs which any such tribunal may award as a condition of the modification of the Restrictive Covenants

iv. the expense of complying with any injunction which may be awarded against the Insured or any undertaking given by the Underwriters in the name of the Insured in any such proceedings

v. the difference between the market value of the Property on the assumption that the Covenants are unenforceable and the market value subject to the Covenants to the extent that they are held to be enforceable by any Court or Tribunal such values to be calculated by reference to prices current at the date of any Order by such Court or Tribunal

vi. any capital sum expended or contracted for on works for the purpose of the Development (including any architect’s surveyor’s and legal fees necessarily incurred) up to the date of any Order by any Court or Tribunal to the extent that such expenditure is rendered abortive by any such Order

IN DEALING with any claim the Underwriters will at their discretion be entitled to:

a) take or defend in any Court or Tribunal in the name of the Insured any proceedings arising out of such claim

b) exercise in the name of the Insured any rights or remedies available to the Insured in such proceedings including the right to abandon or submit to judgement

c) compromise settle or compound any such claim

d) deal with such claim in such manner as they think fit

PROVIDED however that before exercising their power to abandon proceedings or submit to judgement in proceedings or compromise settle or compound any claim the Underwriters shall inform the Insured of their intentions and give the Insured reasonable opportunity to comment thereon

1. Regardless of the number of claims that may be made against the Insured during the Period of Insurance the total amount payable by the Underwriters under this policy shall not exceed in the aggregate the Limit of Indemnity

2. The Insured shall at all times comply with the requirements of the Conditions hereinafter set out.

CONDITIONS

1. Upon becoming aware of any occurrence affecting the risk insured against or likely to give rise to a claim under this policy the Insured shall not admit any liability nor take any steps to compromise or settle any claim without the consent in writing of the Underwriters but shall with all due diligence give to the Underwriters particulars in writing of such occurrence and shall thereupon give all due and proper information and assistance to the Underwriters or their solicitors agents or surveyors in or about the conduct of any proceedings which the Underwriters may think fit to take at their own expense either in the name of the Insured or in the name of the Underwriters (whether before or after settlement of any claim) including any steps the Underwriters may wish to take for the purpose of enforcing any rights seeking any remedies or obtaining any relief indemnity or contribution from any other party or parties to which the Underwriters may be or become entitled by right of subrogation or otherwise upon payment or satisfaction of any claim under this policy.

2. If any step action or proceedings by any third party likely to give rise to a claim under this policy shall be induced either wholly or partly by or through any act or omission of the Insured (save as may already have occurred and be recorded in this policy or schedule) this policy shall be void.

3. If at the time of any claim made under this policy there be any other insurance or insurances subsisting (whether effected by the Insured or by any other person) under which the Insured may be entitled to make a claim wholly or partly in respect of the same risk or interest covered by this policy the Underwriters shall be liable to pay or contribute in respect of such claim rateably with such other insurance or insurances.

4. If any difference shall arise as to the amount to be paid under this policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions in that behalf for the time being in force. Where any difference is by this condition to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Underwriters.

5. Unless it is specifically agreed between the Underwriters and the Insured to the contrary this insurance shall be governed by English law.

6. The existence of this indemnity or any information relating thereto shall not be disclosed to any third party other than bona fide purchasers their mortgagees and lessees and their respective professional advisers without the prior written consent of the Underwriters.

7. No communication of any kind shall be made by or on behalf of the Insured with any person(s) or corporation who may have a prior right title or interest in the access way (save as may already have occurred and be recorded in the proposal and particulars in writing).

MORTGAGEES AND SUCCESSORS IN TITLE-CLAUSE

Notwithstanding anything contained herein to the contrary the interest of any mortgagee or chargee or successor in title to the original Insured in this Policy shall not be prejudiced by any act or default of any party (not being such mortgagee or chargee or successor) which might otherwise invalidate or reduce the indemnity provided by this Policy.

ACCESS SERVICES AND RESTRICTIVE COVENANT INDEMNITY SCHEDULE

|  |  |
| --- | --- |
| Policy Number: | Single Premium: |
|  | Insurance Premium Tax: |
|  | Total Taxed Premium: |

|  |  |
| --- | --- |
| The Underwriters: | LIBERTY LEGAL INDEMNITIES |
|  | Underwritten by Syndicate 190 at Lloyd’s |
|  |  |
| The Insured: | and the Insured’s successors in title (including mortgagees and lessees) to the Property or any part or parts thereof all of whom shall be bound by the terms conditions and provisions of this policy. |
|  |  |
| The Property: |  |
|  |  |
| The Defect: |  |
|  |  |
| The Restrictive Covenants: |  |
|  |  |
| The Development: |  |
|  |  |
| Limit of Indemnity: |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Period of Insurance |  | Date of Commencement: |  |
|  |  | Expiry Date: | The period commencing with the Date of Commencement and continuing in perpetuity. |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| Date Policy Signed: |  |  |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed for and on behalf

of the Underwriters

Issued by: -

Countrywide Legal Indemnities Limited

For and on behalf of

Liberty Legal Indemnities

St Crispins

Duke Street

Norwich

Norfolk NR3 1PD

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2 Title Ins. Law Appendix 22C (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 22. Title Insurance on Property Outside the United States**

**Appendices**

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=Iba23a1714bfc11daac9f8f8d3fbf89fa&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Appendix 22C. Owner’s & Lender’s Residential Policies

OWNER’S & LENDER’S RESIDENTIAL POLICIES

|  |  |
| --- | --- |
| London & European Title Insurance Services, Ltd. | (Versions Available 1/2002) |
|  |  |

Title Insurance

Underwritten by Participating [**Syndicates**](http://practicallawconnect.thomsonreuters.com/Document/I03f4d925eee311e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) at Lloyd’s

Exclusively managed by

London & European Title Insurance Services Limited

This is to Certify that in accordance with the authorization granted under the Contract (the number of which is specified in the Schedule) to the undersigned by certain Underwriters at Lloyd’s, whose definitive numbers and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract which bears the Seal of Lloyd’s Policy Signing Office and in consideration of the payment of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, their Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

Notwithstanding anything to the contrary contained herein this Certificate does not cover loss, damage or liability directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claim hereunder shall be forfeited.

In Witness whereof this Certificate has been signed at the place stated and on the date specified in the Schedule by:

[​Image 1 within document in PDF format.](http://practicallawconnect.thomsonreuters.com/Link/Document/Blob/I40a89b1027e111deaef69a11883c9353.pdf?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.DocLink))



|  |  |
| --- | --- |
| London & European Title Insurance Services, Ltd. | (Version Available 1/2002) |
|  |  |

OWNER’S TITLE INSURANCE CONTRACT

**(Residential)**

**EWOO3**

PartI.

Subject to the Exclusions from Coverage (Part II) contained herein and the Terms and Conditions hereof (Part III) the Underwriters hereby insure the Insured as of the Contract Date and Time stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) against Actual Loss not exceeding the Limit of Indemnity stated in Schedule A together with such costs legal fees and expenses which the Underwriters may become obliged to pay in respect of such loss sustained or incurred by reason of the matters set out below.

1. The title to the Property being vested otherwise than in the Insured

2. Any defect in the Title to the Property or any defect or invalidity or claim in respect of any deed document or other instrument by virtue of which the Title is purported to be vested as stated in Schedule A

3. The Title to the Property being other than good and marketable by reason of lost and/or missing deed documents or other instruments by virtue of which the Title is purportedly vested as stated in Schedule A the necessity of which deeds documents or other instruments is requisite for the purposes of effecting a sale for value of the Property and/or obtaining registration at HM Land Registry of such Title and/or affording a good and valuable security for the Mortgage

4. The lack of capacity or other disability of any predecessor in title to the Mortgagor from any cause including but not limited to personal insolvency the dissolution of a corporate predecessor in title by operation of law or a failure to comply with the provisions of the Matrimonial Homes Act 1967

5. Any [**restrictive covenant**](http://practicallawconnect.thomsonreuters.com/Document/I1559f7bceef211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) restricting or otherwise adversely affecting the use of the Property as a single family dwelling

6. The lack of at least one means of unrestricted pedestrian access to and egress from the Property and where there is a garage situated upon the Property the lack of a means of suitable vehicular access to and egress from such garage

7. Any inaccuracy or omission in the replies to the standard forms of local authority land charges register search and enquiries of a local authority (limited in the case of enquiries of local authorities to replies to Part I enquiries) or changes therein prior to the Contract Date

8. The lack of or defect in any requisite planning permission Building Regulation London Building Acts or bye law approvals in respect of the use of the Property as a single family dwelling

9. Where the title to the Property is registered at HM Land Registry in addition to the other matters in respect of which this Contract of Insurance affords an indemnity any overriding interests as the same are defined in section 70(1) of the Land Registration Act 1925

10. Where the tenure of the Property is leasehold any of the foregoing matters specified in Part I of this Contract of Insurance which have a direct impact on the Title; inconsistency of the Title with any superior interest from which the Title is derived; the non performance, including the failure to pay the reserved rent, of any obligation imposed by the superior interest from which the Title is derived and which obligation or duty had crystallized at the Contract Date and Time but not otherwise

**IF YOU HAVE ANY QUERIES PLEASE CONTACT**

**OUR HELPLINE ON 0171 945 7850**

**KEEP THIS POLICY IN A** [**SAFE**](http://practicallawconnect.thomsonreuters.com/Document/I22fbe7689f7211e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) **PLACE WITH THE DEED**

**TO YOUR HOUSE**

**IT IS A VALUABLE DOCUMENT**

London & European Title Insurance Services Limited

Aldgate House

33 Aldgate High Street

London EC3N IAQ

EXCLUSIONS FROM COVERAGE

PartII.

This Contract of Insurance shall afford no indemnity in respect of the following matters and the Underwriters will make no payment in respect of any loss damage costs fees expenses or other similar by reason of:

1. Matters that would have been disclosed by a physical inspection of the Property

2. Changes in the use of the Property subsequent to the Contract Date

3. Defects encumbrances adverse claims or other such matters

3.1. adverse to the interests of the Insured which were created agreed assumed or permitted by the Insured

3.2. not known to the Underwriters and not disclosed by any document of title but which were known to the Insured at the Contract Date and which matters were not disclosed in writing to the Underwriters prior to the Contract Date

3.3. which result in no loss to the Insured

3.4. created suffered agreed assumed or attaching to the Property or otherwise coming into existence after the Contract Date except where the same are specifically covered by this Contract of Insurance by means of endorsement

3.5. which result in loss or damage and which loss or damage would not have been sustained had the title to or interest or estate in the Property been acquired for value in good faith by the Insured

4. The right and title of the Crown or any other statutory body in and to precious metals petroleum coal and such other substances in or under the Property as shall from time to time be reserved by and to the Crown and the related rights to use the Property for such purposes

5. Any loss damage fees costs or other expenses the Insured may suffer in respect of seepage pollution contamination or other deleterious matter in or over or to the Property

6. Such other matters as may be specified in Section 1 of Schedule B of Part IV

7. This Contract does not cover

(a) loss or destruction of or damage to any property whatsoever or any loss or expenses whatsoever resulting or arising therefrom or any consequential loss

(b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

(i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel

(ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof or the combustion of nuclear fuel

(iii) electromagnetic fields

Where in any action suit or other proceedings the Underwriters allege that by virtue of the provisions of these exclusions any loss damage costs fees or other expenses are not covered by this Contract of Insurance the burden of proving that one or more of these exclusions does not apply shall lie with the Insured.

TERMS AND CONDITIONS

PARTIII.

Definitions

1. In this Contract of Insurance, including the Schedules

1.1. the following words phrases and expressions shall have the following meanings unless the context in which such words phrases and expressions are used shall otherwise require

“Actual Loss” shall mean the lesser of either:

(i) the cost to Underwriters of rectifying the Title defect in respect of which the claim is made; or

(ii) the Limit of Indemnity set out in Schedule A;

provided always that under no circumstances shall the amount payable by Underwriters under sub-clause (ii) above exceed the open market value of the Property as t the Contract Date

“Contract Date” shall mean the date and time so stated in the Certificate of Title Insurance appended hereto

“the Insured” shall mean the person so stated in Schedule A of the Certificate of title Insurance

“Lessor” shall mean any reversioner to the Insured’s interest in the Property or any other person having vested in them a superior title to that of the Insured

“Limit of Indemnity” shall mean the sum stated in respect of the Property in respect of which this Policy affords an indemnity as the same is more particularly specified in the Schedule And the “Mortgagee” shall mean that person so described in Schedule A

“the Property” shall mean all that piece or parcel of land with the buildings messuages and other structures situated thereupon more particularly specified in Schedule A subject to and with the benefit of the matters referred to therein

“Solicitor” shall mean for the purposes of this Contract of Insurance any person permitted by law to describe themselves as a solicitor or any licensed conveyancer or any partner or employee of the firm of solicitors or licensed conveyancers acting on behalf of the Insured

“Surveyor” shall mean any valuer or surveyor acting on behalf of the Insured together with any partner or employee thereof

“Title” shall mean the aggregate of the deeds conveyances transfers and other documents by which the rights and interests in over or to the Property shall be vested in any person natural or otherwise

1.2. except where the context otherwise requires words denoting the singular shall include the plural and vice versa; words denoting any gender shall include the other genders and shall include corporations and vice versa

1.3. clause headings are for ease of reference only and do not affect the construction of this Contract of Insurance

1.4. All references t a statutory provision shall be construed as including references to:

1.4.1. any statutory consolidation or re-enactment (whether before or after the Contract Date) for the time being in force

1.4.2. any statutory orders or instruments made pursuant to any of the matters referred to in 1.5.1 above

1.4.3. any statutory provisions of which it is a consolidation or re-enactment

2. Notices

2.1. All communications between the Underwriters and the Insured and/or their respective solicitors relating to this Contract of Insurance shall be delivered by hand or sent by first [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) pre-paid post or by facsimile transmission to the address of the addressee set out herein or to such other address as the addressee may from time to time have notified in writing to the other party for the purpose of this clause

2.2. Communications in writing shall be deemed to have been received:

2.2.1. if sent by first class pre-paid post: two business days after posting exclusive of the day of posting

2.2.2. if delivered by hand: on the day of delivery

2.2.3. if sent by facsimile transmission: at the time of transmission

2.3. In proving service:

2.3.1. delivery by hand: it shall be necessary only to produce a receipt for the communication signed by or for and on behalf of the addressee

2.3.2. by post: it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause

2.3.3. by facsimile transmission: it shall only be necessary to prove that no notice of failure of receipt had been received by the party making the transmission and by proof of the original copy of the transmission in the same manner as for proof of postage

3. Entire Agreement and Schedules

3.1. This Contract of Insurance and the Schedules shall constitute the entire agreement and understanding between the parties with respect to all matters referred to herein

3.2. All Schedules form part of this Contract of Insurance

4. Applicable Law

This Contract of Insurance shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto irrevocably submit to the exclusive jurisdiction of the High Court of Justice of England and Wales in respect of any dispute or difference or matter arising out of or connected with this Contract of Insurance save where specific provision is made to the contrary herein

5. Dispute Resolution

In the event of any dispute or difference arising as to any sum to be paid under this Contract of Insurance (liability otherwise being admitted) such dispute or difference shall be referred to an Arbitrator to be appointed by the President for the time being of the Chartered Institute of Arbitrators in accordance with the statutory provisions in respect thereof from time to time in force. Where any dispute or difference between the parties is by this clause to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Underwriters

6. Limits of Cover

6.1. The indemnity afforded by this Contract of Insurance shall not exceed the amount of the Actual Loss incurred by the Insured, provided that such Loss arises as a result of one or more of the matters set out in Part I hereof

6.2. The Underwriters shall incur no liability to make any payment to the Insured in respect of any defect or alleged claim if the Underwriters secure the removal of or remedy the defect within six months after having received the proof of loss referred to in clause 9.1

6.3. Any payment made to the Insured as a result of the indemnity afforded by this Contract of Insurance shall reduce the Limit of Indemnity by a like sum

6.4. Where the Insured does or fails to do any act which may adversely affect the Insured’s right to recover any sum from any third party in respect of any indemnity afforded by this Contract of Insurance the Underwriters may deduct from any sum otherwise due to the Insured the amount by which the value of such rights is reduced or the Underwriters may recover such sum from the Insured if the Underwriters shall have previous made payment in respect of such claim

6.5. For the purposes of determining the Actual Loss where the Property is subject to a mortgage the Underwriters shall incur no liability to the Insured greater than the difference between the principal sum outstanding at the Contract Date and the Limit of Indemnity (exclusive of [**fixtures**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a339fef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and fittings) provided that the Property shall have been purchased by the Insured within five years of the Contract Date. Where more than five years shall have elapsed since the purchase of the Property or the Property shall have vested in the Insured other than by purchase at arms length then the value to be ascribed to the Property shall be such sum as the Underwriter’s Surveyor shall in his absolute discretion determine

6.6. The indemnity afforded by this Contract of Insurance shall be reduced by the amount of any claims paid by the Underwriters under any Contract of Insurance affording like cover in respect of any mortgage secured upon the Property specified in Schedule B

6.7. Any payment made or to be made to the Insured as a result of the indemnity afforded by this Contract of Insurance shall carry interest at the lesser of either the like rate as that from time to time in force in respect of judgments issuing from the High Court of Justice of England and Wales or the lowest rate from time to time accruing in respect of the then outstanding balance of the loan secured by the Mortgage. Such interest shall accrue to the Insured from 30 days after the Insured has provided Underwriters with the fully detailed and particularized proof of loss required pursuant to clause 9.1 hereof, until the date upon which payment is made to the Insured

7. Commencement and Duration of Policy

7.1. This Contract of Insurance shall commence on the date and at the time specified in Schedule A

7.2. This Contract of Insurance shall continue in full force and effect until such time as the first of the following events may occur whereupon the indemnity afforded by this Contract of Insurance shall cease and terminate forthwith namely:-

7.2.1. Where this Contract of Insurance is issued contemporaneously with a Contract of Insurance issued by the Underwriters in similar terms in favour of the Mortgagee of the Insured when the Insured shall discharge his indebtedness to such Mortgagee under the terms of the Mortgage secured upon the Property

7.2.2. upon the payment by the Underwriters to the Insured of the Limit of Indemnity

7.2.3. forthwith upon the transfer conveyance dealing with or other devolution of any interest of the Insured in the Property

8. Indemnity

8.1. The Underwriters will subject to the terms conditions warranties and exclusions contained or referred to in this Contract of Insurance in respect of claims notified to the Underwriters during the term of this Contract of Insurance indemnify the Insured against such loss and damage as is more particularly defined in Part I of this Contract of Insurance and for which the Limit of Indemnity is stated in and specified in Schedule A

8.2. The Underwriters will further pay (in addition to the Limit of Indemnity) any costs of expenses incurred in the defense or settlement of any claim which fails to be handled by virtue of the indemnity afforded by this Contract of Insurance provided always that the Underwriters shall incur no such liability in respect of any costs or expenses incurred prior to the giving of notice pursuant to clause 9.1 hereof

8.3. In the event of any claim being made under the terms hereof all reasonable means and steps to secure recovery shall be pursued by the Insured (including but not limited to recovery under any other policy of insurance arranged by the Insured and/or the Mortgagee) and fully exhausted before the operation of the indemnity afforded by this Contract of Insurance but without prejudice to the generality of the foregoing neither the Insured nor the Mortgagee shall be obliged to prosecute or defend any judicial or administrative proceedings relating to the Property

8.4. The liability of the Underwriters (exclusive of costs and expenses and interest payable under clause 8.2 and interest payable under clause 6.7) shall not exceed the Limit of Indemnity specified in the Schedule A

8.5. Subject to the terms and conditions of this Contract of Insurance where the Underwriters shall become liable to make any payment to or on behalf of the Insured

(i) in respect of any one or more of the matters referred to in Part I hereof such payment shall be made by the Underwriters within 30 days of the giving of notice in writing by the Underwriters to the Insured of acceptance of liability and the final determination of the Actual Loss, and

(ii) in respect of any costs and/or expenses incurred by the Insured pursuant to clause 8.2 above where the Underwriters shall have accepted a claim made under Part I hereof within 30 days of the Insured giving notice in writing to the Underwriters of the amount of such costs and/or expenses subject to the Underwriters having vested in them all the Insured’s rights and remedies relating thereto provided that the Insured shall not make such claims in respect of costs and/or expenses at intervals of less than three months

9. Notice of Claim

9.1. The insured shall give notice in writing to the Underwriters within fourteen days after being made aware of any matter upon which a claim is based. Within ninety days of the giving of the notice referred to above the Insured shall provide the Underwriters with a fully detailed and particularized proof of loss in such manner as shall reasonably be required. It is a condition precedent to the liability of the Underwriters under this Contract of Insurance that the Insured shall both give notice and provide proof of loss within the periods of time specified above and that the Insured shall also as soon as is practicable provide the Underwriters with copies of all correspondence notices writs summonses and/or other documents of whatsoever nature bearing upon the claim or loss

9.2. The insured shall make no admission promise payment indemnity or in any other manner compromise or settle any claim loss or damage in respect of which this Contract of Insurance does or may afford an indemnity nor shall any costs or expenses be incurred by or on behalf of the Insured in respect of any matter in respect of which this Contract of Insurance does or may afford an indemnity without the prior written consent of the Underwriters

9.3. The Underwriters shall be entitled to take over and conduct in the name of the Insured the defense and/or settlement of any claim and/or to prosecute in the name of the Insured for their own benefit any claim and the Underwriters shall have full discretion in the conduct of all and any proceedings and in the settlement of any claim in respect of which this Contract of Insurance affords an indemnity. At all times the Insured shall give such information and assistance as the Underwriters may reasonably require

9.4. The Underwriters may at any time in respect of claims made against the Insured pay to the Insured the Limit of Indemnity (after the deduction of any sum previously paid under this Contract of Insurance in respect of the same Property) or such lesser sum for which such claim may be settled whereupon the Underwriters shall relinquish control of such claim and be under no further liability in respect thereof save to the extent of such costs fees or expenses incurred prior to payment by Underwriters to the Insured of the Limit of Indemnity

9.5. The Insured shall at all reasonable times subject to the giving of reasonable notice by the Underwriters afford access to the Underwriter’s duly authorized representatives for the purposes of investigating the circumstances of any loss or damage sustained or claimed by the Insured in respect of which this Contract of Insurance does or may afford an indemnity. The Insured shall at its own expense provide t the Underwriters such assistance as they may reasonably require for the purposes of investigating said circumstances including but not limited to the furnishing of all books of account computer records receipts and other records pertaining to the subject matter of the claim in whatsoever manner the same may be stored and all communications passing between the Insured and their solicitors surveyors other professional advisers intermediaries (to include financial advisers) and third parties which it may have in its possession. The Insured shall at its own expense provide the Underwriters with copies of such of the above as they may reasonably require and the Insured shall otherwise provide all reasonable assistance to the Underwriters in the investigation of any loss in respect of which this Contract of Insurance does or may afford an indemnity and the Underwriters shall not be precluded from using anything disclosed by the Insured for the purposes of defending or pursuing any claim or recovery by or against the Insured or by or against any third party

9.6. Any recovery which either the Underwriters or the Insured shall make subsequent to the making of any payment to the Insured in respect of any loss in respect of which this Contract of Insurance affords an indemnity shall inure firstly to the Insured to the extent only of any payment made or loss incurred by the Insured in excess of the Limit of Indemnity in respect of that loss and any surplus thereafter to the benefit of the Underwriters

9.7. The Insured hereby agrees and acknowledges that any sums he shall hold for the benefit of the Underwriters he shall

9.7.1. hold in trust for the Underwriters and

9.7.2. that he will pay such sums received to the Underwriters promptly upon the receipt thereof by him and/or any other person on his behalf

9.8. When the Underwriters shall have made of become liable to make payment to the Insured in respect of any matter by virtue of which this Contract of Insurance affords an indemnity they shall have vested in them all the rights of the Insured against any person or property relating to the subject matter of that indemnity and the Insured shall at the request of the Underwriters transfer all such rights to the Underwriters.

10. General Conditions

10.1. The due observance of the terms conditions warranties time limits and provisions of this Contract of Insurance insofar as they relate to any act required to be done or required not to be done or otherwise requiring compliance with the terms hereof shall be and are hereby expressly agreed to be [**conditions precedent**](http://practicallawconnect.thomsonreuters.com/Document/I1559f7baeef211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to the assuming of any liability by the Underwriters to make any payment under the terms of this Contract of Insurance

10.2. The Insured shall take all reasonable and prudent steps to prevent and/or mitigate any loss damage costs or expenses in respect of which this Contract of Insurance does or may afford an indemnity

10.3. Where any court or tribunal of competent jurisdiction shall determine that any provision of this Contract of Insurance is invalid or unenforceable then this Contract of Insurance shall be deemed to exclude such provision and the remaining provisions hereof shall continue in full force and effect

11. Assignment

This Contract of Insurance shall be personal to the Insured and shall not be capable of assignment transmission or other devolution by the Insured provided always that the Underwriters may assign transfer or otherwise deal in any manner they may so determine with their interest in this Contract of Insurance

EU DISCLOSURE CLAUSE (UK)

The parties are free to choose the law applicable to this Insurance Contract. Unless specifically agreed to the contrary this insurance shall be subject to English law.

Any enquiry or complaints should be addressed in the first instance to your broker.

If you are not satisfied with the way a complaint has been dealt with you may ask the Complaints and Advisory Department at Lloyd’s to review your case without prejudice to your rights in law.

 Complaints and Advisory Department

Lloyd’s

One Lime Street

LONDON EC3M 7AH

Telephone: 0171 623 7100

TERMS AND CONDITIONS

LOCAL AUTHORITY AND MINING SEARCH ENDORSEMENT

(OWNER’S)

Paragraph 7 of the Insuring Clause of Part I of the Owner’s Basic Title coverage is hereby extended to cover loss sustained or incurred as a result of the failure by or on behalf of the Insured to obtain replies to the standard forms of local authority land charges register search and enquiries of the local authority and/or a relevant search or enquiry relating to coal, tin, brine, clay, limestone or other mineral extraction or mining activity (hereinafter called a “Mining Search”) of the appropriate authority to which such search or enquiry would be made or referred, where such loss arises as a direct result of an Adverse Entry which would have been disclosed had such replies been obtained by or on behalf of the Insured.

For the purpose of this endorsement, “Adverse Entry” means any entry registered against the Property in the part of the register of local land charges kept by the registering authority for subsisting registrations against the Property and any matter which would have been disclosed in a reply by a local authority to an enquiry in Conveyancing Form 29 (or any official replacement or substitute form) and any matter which would have been revealed against the Property by a Mining Search.

It is warranted that the Insured has no actual knowledge at the date hereof of any matter which might give rise to a claim under the terms of this endorsement.

All other terms and conditions remain unchanged.

LONDON & EUROPEAN TITLE INSURANCE SERVICES LIMITED

by \_\_\_\_\_

OWNER’S

CERTIFICATE OF TITLE INSURANCE

(EW-003)

PART IV

SCHEDULE A

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| CERTIFICATE NO: XXX/0/00000 | | |  | Contract Effective Date: 00/00/00 |
|  |  |  |  |  |
| Report on Title Dated: (Per Lender’s Report) | | |  | Prepared by: (Per Lender’s Report) |
|  |  |  |  |  |
| The Insured: | Mr & Mrs Borrower | |  |  |
| of: | Address, Address, Address, Address. | |  |  |
|  |  |  |  |  |
| Limit of Indemnity: £00,000:00 | | |  |  |
|  |  |  |  |  |
| The Property: | Address, Address, Address, | | any one claim and in the aggregate. | |
|  | Address, Address, Address. | |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| The Mortgagee: | Mortgage Lender plc | |  | or his permitted assigns |
|  |  |  |  |  |
| Premium: |  | Paid |  |  |

SCHEDULE B

TITLE DEFECTS EXCLUDED

Section1.

This Contract does not insure against loss or damage by reason of the following:-

1. Those matters referred to in Part II of this Contract of Insurance.

2. A mortgage dated [ ] in favour of the Mortgagee.

Section2.

In addition to the matters set forth in Section 1 of this Schedule B the title to the estate or interest in the Property is subject to the following matters if any be shown but the Underwriters insure Title to the Property notwithstanding such matters

1. Any Deed of Gift; Defective Lease or Maisonette Indemnity; Lack of Documentary Right of Way or Support; Restrictive Covenants; Rights of Adverse Possession

This Certificate has been signed and dated in accordance with the authorization granted under Contract Number: FB 000497

by:

London & European Title Insurance Services Limited

Blagrave House

17 Blagrave Street

Reading RGI IPW

\_\_\_\_\_\_\_\_\_\_\_\_\_

*[Name of attorney for Underwriters]*

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|  |  |
| --- | --- |
| **End of Document** | © 2021 Thomson Reuters. No claim to original U.S. Government Works. |

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2 Title Ins. Law Appendix 22D (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Chapter 22. Title Insurance on Property Outside the United States**

**Appendices**

[References](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=Y&pubNum=152721&cite=TITLEINSL+CH+22+REF&originatingDoc=Iba23a1744bfc11daac9f8f8d3fbf89fa&refType=DA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

Appendix 22D. Lender’s Title Insurance Contract

|  |  |
| --- | --- |
| London & European Title Insurance Services, Ltd. | (Version Available 1/2002) |
|  |  |

LENDER’S TITLE INSURANCE CONTRACT

**(Residential — EW 002)**

**Part I.**

**LENDER’S BASIC TITLE COVERAGE**

Subject to the Exclusions from Coverage (Part II) contained herein and the Terms and Conditions hereof the Underwriters hereby insure the Insured as of the Contract Date and Time stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) against Actual Loss not exceeding the Limit of Indemnity stated in Schedule A together with accrued but unpaid interest due under the Mortgage subject to Part III clause 6.5 hereof plus such costs and expenses which the Underwriters may become obliged to pay in respect of such loss sustained or incurred by reason of the matters set out below.

1. The Title to the Property being vested otherwise than in the Mortgagor

2. Any defect in the Title to the Property or any defect or invalidity or claim in respect of any deed document or other instrument by virtue of which the Title is purported to be vested as stated in Schedule A

3. The Title to the Property being other than good and marketable by reason of lost and/or missing deeds documents or other instruments by virtue of which the Title is purportedly vested as stated in Schedule A the necessity of which deeds documents or other instruments are requisite for the purposes of effecting a sale for value of the Property and/or obtaining registration at HM Land Registry of such Title and/or affording a good and valuable security for the Mortgage

4. The lack of capacity or other disability of any predecessor in title to the Mortgagor from any cause including but not limited to personal insolvency the dissolution of a corporate predecessor in title by operation of law or a failure to comply with the provisions of the Matrimonial Homes Act 1967

5. Any [**restrictive covenant**](http://practicallawconnect.thomsonreuters.com/Document/I1559f7bceef211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) restricting or otherwise adversely affecting the use of the Property as a single family dwelling

6. The lack of at least one means of unrestricted pedestrian access to and egress from the Property and where there is a garage situated upon the Property the lack of a means of suitable vehicular access to and egress from such garage.

7. Any inaccuracy or omission in the replies to the standard forms of local authority land charges register search and enquiries of a local authority (limited in the case of enquiries of local authorities to replies to Part I enquiries) or changes therein prior to the Contract Date.

8. The lack of or defect in any requisite planning permission Building Regulation London Building Acts or bye law approvals in respect of the use of the Property as a single family dwelling.

9. Where the title to the Property is registered at HM Land Registry in addition to the other matters in respect of which this Contract of Insurance affords an indemnity any overriding interests as the same are defined in section 70 (1) of the Land Registration Act 1925.

10. Where the tenure of the Property is leasehold any of the foregoing matters specified in Part I of this Contract of Insurance which have a direct impact on the Title; inconsistency of the Title with any superior interest from which the Title is derived; the non performance, including the failure to pay the reserved rent, or any obligation imposed by the superior interest from which the Title is derived and which obligation or duty had crystallized at the Contract Date and Time but not otherwise.

11. The invalidity of or unenforceability of the Mortgage or the inability of the Insured to perfect its security save to the extent that such invalidity unenforceability or inability of the Insured to perfect its security or claim in respect thereof arises from and out of a transaction falling within and based upon the Consumer Credit Act 1974 or other similar legislation

12. Any other mortgage charge [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or other similar encumbrance secured upon the Property having priority over the Mortgage subject nevertheless to Schedule B of Part IV hereof

13. The invalidity or unenforceability of any assignment [**novation**](http://practicallawconnect.thomsonreuters.com/Document/I2104deb5ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) other substitution of the Insured or transfer of the Mortgage or the failure of any such assignment novation other substitution of the Insured or transfer to vest right and title in the Mortgage in the assignee transferee or other person to whom it is purported to substitute provided that all charges taxes levies imposts duties fees and other costs due or incurred in respect thereof have been met and settled

**Part II.**

**EXCLUSIONS FROM COVERAGE**

This Contract of Insurance shall afford no indemnity in respect of the following matters and the Underwriters will make no payment in respect of any loss damage costs fees or other similar expenses arising by reason of:

1. Changes in the use of the Property subsequent to the Contract Date

2. Defects encumbrances adverse claims or other such matters

2.1. adverse to the interests of the Insured which were created agreed assumed or permitted by the Insured

2.2. not known to the Underwriters and not disclosed by any document of title but which were known to the Insured at the Contract Date and which matters were not disclosed in writing to the Underwriters prior to the Contract Date

2.3. which result in no loss to the Insured

2.4. created suffered agreed assumed or attaching to the Property or otherwise coming into existence after the Contract Date except where the same are specifically covered by this Contract of Insurance by means of endorsement

2.5. which result in loss or damage and which loss or damage would not have been sustained had the title to or interest or estate in the Property or the Mortgage been acquired for value in good faith by the Insured and the Mortgagor

3. The right and title of the Crown or any other statutory body in and to precious metals petroleum coal and such other substances in or under the Property as shall from time to time be reserved by and to the Crown and the related rights to use the Property for such purposes

4. Any loss damage fees costs or other expenses the Insured may suffer in respect of seepage pollution contamination or other deleterious matter in or over or to the Property

5. Such other matters as may be specified in Section 1 of Schedule B of Part IV

6. This Contract does not cover

(a) loss or destruction of or damage to any property whatsoever or any loss or expenses whatsoever resulting or arising there from or any consequential loss

(b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

(i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel

(ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof or the combustion of nuclear fuel

(iii) electromagnetic fields

Where in any action suit or other proceedings the Underwriters allege that by virtue of the provisions of these exclusions any loss damage costs fees or other expenses are not covered by this Contract of Insurance the burden of proving that any one or more of these exclusions does not apply shall lie with the Insured

**Part III.**

**TERMS AND CONDITIONS**

1. Definitions

1. In this Contract of Insurance including the Schedules

1.1. The following words phrases and expressions shall have the following meanings unless the context in which such words phrases and expressions are used shall otherwise require

“Actual Loss” shall mean the lesser of either:-

(i) the cost to Underwriters of rectifying the Title defect in respect of which the claim is made; or

(ii) the unpaid principal balance of the Mortgage together with accrued but unpaid interest thereon subject to Part III clause 6.5 hereof at the date on which the claim is paid by the Underwriters to the Insured; or

(iii) the Limit of Indemnity set out in Schedule A of Part IV

provided always that under no circumstances shall the amount of principal payable by Underwriters under sub-clause (ii) above exceed the open market value of the Property at the time monies were advanced by the Insured pursuant to the terms of the Mortgage, together with such unpaid interest as may have accrued on such sum up to the date on which Notice of the claim was given.

“Contract Date” shall mean the date and time so stated in the Certificate of Title Insurance appended hereto

“The Insured” shall mean the person so stated in Schedule A of the Certificate of Title Insurance

“Lessor” shall mean any reversioner to the Mortgagor’s interest in the Property or any other person having vested in them a superior title to that of the Mortgagor

“Limit of Indemnity” shall mean the sum stated in respect of the Property in respect of which this Contract of Insurance affords an indemnity as the same is more particularly specified in Schedule A subject nevertheless to the provisions of clause 6 hereof

“the Mortgage” shall mean any legal mortgage or charge on the Property executed by the Mortgagor securing the loan therein stated full particulars of which are stated in Schedule A

“the Mortgagor” shall mean the person or persons who have executed the Mortgage in favour of the Insured whether singly or jointly as stated in Schedule A

“the Property” shall mean all that piece or parcel of land together with the buildings messuages and other structures situated thereupon more particularly specified in Schedule A subject to and with the benefit of the matters referred to therein and upon which the Mortgage is secured

“Solicitor” shall mean for the purposes of this Contract of Insurance any person permitted by law to describe themselves as a solicitor or any licensed conveyancer or any partner or employee of the firm of solicitors or licensed conveyancers acting on behalf of the Insured

“the Surveyor” shall mean any valuer or surveyor acting on behalf of the Insured together with any partner or employee thereof

“Title” shall mean the aggregate of the deeds conveyances transfers and other documents by which the rights and interests in over or to the Property shall be vested in any person natural or otherwise

1.2. except where the context otherwise requires words denoting the singular shall include the plural and vice versa; words denoting any gender shall include the other genders and shall include corporations and vice versa

1.3. clause headings are for ease of reference only and do not affect the construction of this Contract of Insurance

1.4. All references to a statutory provision shall be construed as including references to:-

1.4.1. any statutory consolidation or re-enactment (whether before or after the Contract Date) for the time being in force

1.4.2. any statutory orders or instruments made pursuant to any of the matters referred to in 1.4.1 above

1.4.3. any statutory provisions of which it is a consolidation or re-enactment

2. Notices

2.1. All communications between the Underwriters and the Insured and/or their respective solicitors relating to this Contract of Insurance shall be delivered by hand or sent by first [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) pre-paid post or by facsimile transmission to the address of the addressee set out herein or to such other address as the addressee may from time to time have notified in writing to the other party for the purpose of this clause.

2.2. Communications in writing shall be deemed to have been received:

2.2.1. if sent by first class pre-paid post: two business days after posting exclusive of the day of posting

2.2.2. if delivered by hand: on the day of delivery

2.2.3. if sent by facsimile transmission: at the time of transmission

2.3. In proving service:

2.3.1. delivery by hand: it shall be necessary only to produce a receipt for the communication signed by or for and on behalf of the addressee

2.3.2. by post: it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause

2.3.3. by facsimile transmission: it shall only be necessary to prove that no notice of failure of receipt had been received by the party making the transmission and by proof of posting the original copy of the transmission in the same manner as for proof of postage

3. Entire Agreement and Schedules

3.1. This Contract of Insurance and the Schedules shall constitute the entire agreement and understanding between the parties with respect to all matters referred to herein

3.2. All Schedules form part of this Contract of Insurance

4. Applicable Law

This Contract of Insurance shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto irrevocably submit to the exclusive jurisdiction of the High Court of Justice of England and Wales in respect of any dispute or matter arising out of or connected with this Contract of Insurance save where specific provision is made to the contrary herein

5. Dispute Resolution

In the event of any dispute or difference arising as to any sum to be paid under this Contract of Insurance (liability otherwise being admitted) such dispute or difference shall be referred to an Arbitrator to be appointed by the President for the time being of the Chartered Institute of Arbitrators in accordance with the statutory provisions in respect thereof from time to time in force. Where any dispute or difference between the parties is by this clause to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Underwriters

6. Limits of Cover

6.1. The indemnity afforded by this Contract of Insurance shall not exceed the amount of the Actual Loss incurred by the Insured, provided the such loss arises as a result of one or more of the matters set out in Part I hereof

6.2. The Underwriters shall incur no liability to make any payment to the Insured in respect of any defect or alleged claim if the Underwriters secure the removal of or remedy the defect within six months after having received the proof of loss referred to in clause 9.1

6.3. Any payment made to the Insured as a result of the indemnity afforded by this Contract of Insurance shall reduce the Limit of Indemnity by a like sum

6.4. Where the Insured does or fails to do any act which may adversely affect the right to recover any sum from any third party in respect of any indemnity afforded by this Contract of Insurance the Underwriters may deduct from any sum otherwise due to the Insured the amount by which the value of such rights is reduced or the Underwriters may recover such sum from the Insured if the Underwriters shall have previously made payment in respect of such claim

6.5. Any payment which the Underwriters are liable to make to the Insured as a result of the indemnity afforded by this Contract of Insurance shall carry interest as follows:-

(1) Interest accrued under the Mortgage but unpaid for any one or more of the reasons set out in Part I hereof as at the date of notification of the claim hereunder, for a maximum of three months immediately preceding the date of such notification

(2) Interest on the unpaid principal balance of the Mortgage, from 30 days after the Insured has provided to the Underwriters the fully detailed and particularized Proof of Loss required pursuant to clause 9.1 hereof, until the date upon which payment is made to the Insured, subject to a maximum period of six months from the date of provision of the Proof of Loss, and provided further that:-

(i) interest shall be payable at the lower of either the fixed rate prescribed by the Mortgage (if any), or the variable rate recommended from time to time by the Building Societies Association to its members; and

(ii) Underwriters will not be liable for any penalty or default rate of interest

7. Commencement and Duration of Contract

7.1. This Contract of Insurance shall commence on the date and at the time specified in Schedule A hereof

7.2. This Contract of Insurance shall continue in full force and effect until such time as the first of the following events may occur whereupon the indemnity afforded by this Contract of Insurance shall cease and terminate forthwith namely:-

7.2.1. when the Mortgagor shall have discharged his indebtedness to the Insured under the terms of the Mortgage secured upon the Property upon the occurrence of which event the Insured shall promptly notify the Underwriters in writing

7.2.2. upon the payment by the Underwriters to the Insured of the Limit of Indemnity

7.2.3. where the Insured shall have repossessed the Property pursuant to the terms of the Mortgage upon the completion of the sale of the Property by the Insured upon the occurrence of which event the Insured shall promptly notify the Underwriters in writing

8. Indemnity

8.1. The Underwriters will subject to the terms conditions warranties and exclusions contained or referred to in this Contract of Insurance in respect of claims notified to them during the term of this Contract of Insurance indemnify the Insured against such loss and damage as is more particularly defined in Part I hereof and for which the Limit of Indemnity is stated in and specified in Schedule A

8.2. The Underwriters will further pay (in addition to the Limit of Indemnity) any costs or expenses incurred in the defense or settlement of any claim which fails to be handled by virtue of the indemnity afforded by this Contract of Insurance provided always that the Underwriters shall incur no such liability in respect of any costs or expenses incurred prior to the giving of notice pursuant to clause 9.4 hereof and further provided that this Contract of Insurance shall afford no indemnity in respect of any in-house costs or expenses incurred by the Insured whether before or after the giving of notice pursuant to clause 9.4 hereof (where in-house costs shall mean all those costs and expenses which the Insured shall incur excepting such costs and expenses which involve the making of a payment to any third party but not to include any payment to any subsidiary associated or otherwise connected entity whether incorporated or otherwise)

8.3. In the event of any claim being made under the terms hereof all reasonable means and steps to secure recovery shall be pursued by the Insured (including but not limited to recovery under any other policy of insurance arranged by the Insured or the Mortgagor) and fully exhausted before the operation of the indemnity afforded by this Contract of Insurance but without prejudice to the generality of the foregoing whilst the Insured shall not be obliged to prosecute or defend any judicial or administrative proceedings relating to the Property

8.4. The liability of the Underwriters (exclusive of costs or expenses payable under clause 8.2 and interest payable under clause 6.5) shall not exceed the Limit of Indemnity specified in Schedule A of this Contract of Insurance

8.5. Subject to the terms and conditions of this Contract of Insurance where the Underwriters shall become liable to make any payment to or on behalf of the Insured

(i) in respect of any one or more of the matters referred to in Part I of this Contract of Insurance such payment shall be made by the Underwriters within 30 days of the giving of notice in writing by the Underwriters to the Insured of acceptance of liability and the final determination of the Actual Loss, and

(ii) in respect of any costs and/or expenses incurred by the Insured pursuant to clause 8.2 above where the Underwriters shall have accepted a claim made under Part I of this Contract of Insurance within 30 days of the Insured giving notice in writing to the Underwriters of the amount of such costs and/or expenses subject to the Underwriters having vested in them all the Insured’s rights and remedies relating thereto provided that the Insured shall not make such claims in respect of costs and/or expenses at intervals of less than three months

9. Notice of Claim

9.1. The Insured shall give notice in writing to the Underwriters within fourteen days after being made aware of any matter upon which a claim is based. Within ninety days of the giving of the notice referred to above the Insured shall provide the Underwriters with a fully detailed and particularized proof of loss in such manner as shall reasonably be required. It is a condition precedent to the liability of the Underwriters under this Contract of Insurance that the Insured shall both give notice and provide proof of loss within the periods of time specified above and that the Insured shall also as soon as is practicable provide the Underwriters with copies of all correspondence notices writs summonses and/or other documents of whatsoever nature bearing upon the claim or loss

9.2. The Insured shall make no admission promise payment indemnity or in any other manner compromise or settle any claim loss or damage in respect of which this Contract of Insurance does or may afford an indemnity nor shall any costs or expenses be incurred by or on behalf of the Insured in respect of any matter in respect of which this Contract of Insurance does or may afford an indemnity without the prior written consent of the Underwriters

9.3. The Underwriters shall be entitled to take over and conduct in the name of the Insured the defense and/or settlement of any claim and/or to prosecute in the name of the Insured for their own benefit any claim and the Underwriters shall have full discretion in the conduct of all and any proceedings and in the settlement of any claim in respect of which this Contract of Insurance affords an indemnity. At all times the Insured shall give such information and assistance as the Underwriters may reasonably require

9.4. The Underwriters may at any time in respect of claims made against the Insured pay to the Insured the Limit of Indemnity (after the deduction of any sum previously paid under this Contract of Insurance in respect of the same Property) or such lesser sum for which such claim may be settled whereupon the Underwriters shall relinquish control of such claim and be under no further liability in respect thereof save to the extent of such costs fees and expenses incurred prior to payment by Underwriters to the Insured of the Limit of Indemnity

9.5. The Insured shall at all reasonable times subject to the giving of reasonable notice by the Underwriters afford access to the Underwriter’s duly authorized representatives for the purposes of investigating the circumstances of any loss or damage sustained or claimed by the Insured in respect of which this Contract of Insurance does or may afford an indemnity. The Insured shall at its own expense provide the Underwriters such assistance as they may reasonably require for the purposes of investigating said circumstances including but not limited to the furnishing of all books of account computer records receipts and other records pertaining to the subject matter of the claim in whatsoever manner the same may be stored and all communications passing between the Insured and their solicitors surveyors other professional advisers intermediaries (to include financial advisers) and third parties which it may have in its possession. The Insured shall at its own expense provide the Underwriters with copies of such of the above as they may reasonably require and the Insured shall otherwise provide all reasonable assistance to the Underwriters in the investigation of any loss in respect of which this Contract of Insurance does or may afford an indemnity and the Underwriters shall not be precluded from using anything disclosed by the Insured for the purposes of defending or pursuing any claim or recovery by or against the Insured or by or against any third party

9.6. Any recovery which either the Underwriters or the Insured shall make subsequent to the making of any payment to the Insured in respect of any loss in respect of which this Contract of Insurance affords an indemnity shall inure firstly to the Insured to the extent only of any payment made or loss incurred by the Insured in excess of the Limit of Indemnity in respect of that loss and any surplus thereafter to the benefit of the Underwriters

9.7. The Insured hereby agrees and acknowledges that any sums it shall hold for the benefit of the Underwriters it shall

9.7.1. hold in trust for the Underwriters, and

9.7.2. that it will pay such sums received to the Underwriters promptly upon the receipt thereof by it and/or any other person on its behalf

9.8. In addition to but without any obligation in respect thereof the Underwriters may but shall be under no obligation so to do purchase the Mortgagor’s indebtedness to the Insured at any time after the notification of a claim to the Underwriters

9.9. When the Underwriters shall have made or become liable to make payment to the Insured in respect of any matter by virtue of which this Contract of Insurance affords an indemnity they shall have vested in them all the rights of the Insured against any person or property relating to the subject matter of that indemnity and the Insured shall at the request of the Underwriters transfer all such rights to the Underwriters.

10. General Conditions

10.1. The due observance of the terms conditions warranties time limits and provisions of this Contract of Insurance insofar as they relate to any act required to be done or required not to be done or otherwise requiring compliance with the terms of this Contract of Insurance shall be and are hereby expressly agreed to be [**conditions precedent**](http://practicallawconnect.thomsonreuters.com/Document/I1559f7baeef211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to the liability of the Underwriters to make any payment under the terms hereof

10.2. The Insured shall take all reasonable and prudent steps to prevent and/or mitigate any loss damage costs or expenses in respect of which this Contract of Insurance does or may afford an indemnity

10.3. The liability of the Underwriters shall not be extended or increased by reason of the making of further advances and interest accrued in respect thereof after the date of this Contract of Insurance without the prior written consent of the Underwriters for which additional premium may be charged by the Underwriters

10.4. Where any court or tribunal of competent jurisdiction shall determine that any provision of this Contract of Insurance is invalid or unenforceable then this Contract of Insurance shall be deemed to exclude such provision and the remaining provisions hereof shall continue in full force and effect

11. Assignment

This Contract of Insurance shall be binding upon each party’s successors and assigns subject nevertheless to any Assignee of the interest or any part of the interest of either party giving notice in writing to the other within fourteen days of the completion of such assignment. Subject to the immediately foregoing and otherwise subject to the terms and conditions hereof this Contract of Insurance shall be assignable by either party

EU DISCLOSURE CLAUSE (UK)

The parties are free to choose the law applicable to this Insurance Contract. Unless specifically agreed to the contrary this insurance shall be subject to English law.

Any enquiry or complaints should be addressed in the first instance to your broker.

If you are not satisfied with the way a complaint has been dealt with you may ask the Complaints and Advisory Department at Lloyd’s to review your case without prejudice to your rights in law.

 Complaints and Advisory Department

Lloyd’s

One Lime Street

LONDON EC3M 7AH

Telephone: 0171 623 7100

**LENDERS**

**CERTIFICATE OF TITLE INSURANCE**

**(EW 002)**

PartIV.

CERTIFICATE NO:

SCHEDULE A

|  |  |
| --- | --- |
| Report on Title Dated: |  |
|  |  |
| Prepared by: |  |
|  |  |
| Contract Effective Date and Time: |  |
|  |  |
| The Insured: |  |
| of: |  |
|  |  |
| Term of Mortgage: |  |
|  |  |
| Loan Amount: |  |
|  |  |
| Limit of Indemnity: | any one claim and in the aggregate |
|  |  |
| The Property: | The Mortgagor: |
|  |  |
| Premium: |  |

SCHEDULE B

TITLE DEFECTS EXCLUDED

Section1.

This Policy does not insure against loss or damage by reason of the following:-

1. Those matters referred to in Part II of this Contract of Insurance

2.

 Section2.

In addition to the matters set forth in Section 1 of this Schedule B the title to the estate or interest in the Property is subject to the following matters if any be shown but the Underwriters insure the priority and enforceability of the Mortgage notwithstanding such matters

1. (DESCRIPTION OF THE DEFECT(S) TO BE INSURED)

This Certificate has been signed and dated in accordance with the authorization granted under Contract Number: FB950400

by:

London & European Title Insurance Services Limited

Blagrave House

17 Blagrave Street

Reading RG1 1WP

LOCAL AUTHORITY AND MINING SEARCH ENDORSEMENT

(LENDER’S)

Paragraph 7 of the Insuring Clause of Part I of the Lender’s Basic Title coverage is hereby extended to cover loss sustained or incurred as a result of the failure by or on behalf of the Insured to obtain replies to the standard forms of local authority land charges register search and enquiries of the local authority and/or a relevant search or enquiry relating to coal, tin, brine, clay, limestone or other mineral extraction or mining activity (hereinafter called a “Mining Search”) of the appropriate authority to which such search or enquiry would be made or referred, where such loss arises as a direct result of an Adverse Entry which would have been disclosed had such replies been obtained by or on behalf of the Insured.

For the purpose of this endorsement, “Adverse Entry” means any entry registered against the Property in the part of the register of local land charges kept by the registering authority for subsisting registrations against the Property and any matter which would have been disclosed in a reply by a local authority to an enquiry in Conveyancing Form 29 (or any official replacement or substitute form) and any matter which would have been revealed against the Property by a Mining Search.

It is warranted that the Insured lends on properties throughout the United Kingdom and not exclusively in areas that are or have been the subject of mining or other mineral extraction activities.

All other terms and conditions remain unchanged.

LONDON & EUROPEAN TITLE INSURANCE SERVICES LIMITED

by \_\_\_\_\_

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|  |  |
| --- | --- |
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2 Title Ins. Law Appendix A (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I834d6770d6ee11ea8f41e1f6f2a)**

APPENDIX A. ALTA Commitment—2016[\*](#co_footnote_I834d8e80d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Commitment for Title Insurance |
|  | Adopted 08-01-2016 |
|  | |

COMMITMENT FOR TITLE INSURANCE

ISSUED BY

BLANK TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN [**ABSTRACT OF TITLE**](http://practicallawconnect.thomsonreuters.com/Document/Ieaf7162d641111e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN [**SCHEDULE A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, *Blank Title Insurance Company*, a \_\_\_\_\_ *(the “Company”)*, commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within \_\_\_\_\_ *(insert the time period)* after the Commitment Date, this Commitment terminates and the Company’s liability and obligation end.

COMMITMENT CONDITIONS

1. DEFINITIONS

(a) “Knowledge” or “Known”: Actual or imputed knowledge, but not [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) imparted by the Public Records.

(b) “Land”: The land described in Schedule A and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.

(c) “Mortgage”: A mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or other security instrument, including one evidenced by electronic means authorized by law.

(d) “Policy”: Each contract of title insurance, in a form adopted by the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), issued or to be issued by the Company pursuant to this Commitment.

(e) “Proposed Insured”: Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.

(f) “Proposed Policy Amount”: Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.

(g) “Public Records”: Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(h) “Title”: The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company’s liability and obligation end.

3. The Company’s liability and obligation is limited by and this Commitment is not valid without:

(a) the Notice;

(b) the Commitment to Issue Policy;

(c) the Commitment Conditions;

(d) Schedule A;

(e) Schedule B, Part I—Requirements; [and]

(f) Schedule B, Part II—Exceptions[; and

(g) a counter-signature by the Company or its issuing agent that may be in electronic form].

4. COMPANY’S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

(a) The Company’s liability under Commitment Condition 4 is limited to the Proposed Insured’s actual expense incurred in the interval between the Company’s delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured’s good faith reliance to:

(i) comply with the Schedule B, Part I—Requirements;

(ii) eliminate, with the Company’s written consent, any Schedule B, Part II—Exceptions; or

(iii) acquire the Title or create the Mortgage covered by this Commitment.

(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.

(c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

(d) The Company’s liability shall not exceed the lesser of the Proposed Insured’s actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

(e) The Company shall not be liable for the content of the Transaction Identification Data, if any.

(f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

(g) In any event, the Company’s liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

(a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.

(b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.

(c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.

(d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.

(e) Any amendment or endorsement to this Commitment must be in writing [and authenticated by a person authorized by the Company].

(f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company’s only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company’s agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company’s agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

[9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is $2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.]

[*Transaction Identification Data for reference only:*

Issuing Agent:

Issuing Office:

ALTA® Universal ID:

Loan ID Number:

Commitment Number:

Issuing Office File Number:

Property Address:]

[Revision Number:]

SCHEDULE A

1. Commitment Date:

2. Policy to be issued:

(a) [2006 ALTA® Owner’s Policy] [2006 ALTA® Loan Policy] [\_\_\_\_\_ ALTA® \_\_\_\_\_ Policy]

Proposed Insured: \_\_\_\_\_

Proposed Policy Amount: $\_\_\_\_\_

[(b) [2006 ALTA® Owner’s Policy] [2006 ALTA® Loan Policy] [\_\_\_\_\_ ALTA® \_\_\_\_\_ Policy]

Proposed Insured: \_\_\_\_\_

Proposed Policy Amount: $\_\_\_\_\_]

3. The estate or interest in the Land described or referred to in this Commitment is \_\_\_\_\_ *(Identify estate covered, i.e., fee, leasehold, etc.)*

4. Title to the [\_\_\_\_\_] estate or interest in the Land is at the Commitment Date vested in:

5. The Land is described as follows:

BLANK TITLE INSURANCE COMPANY

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

SCHEDULE B, PART I

Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

2. Pay the agreed amount for the estate or interest to be insured.

3. Pay the premiums, fees, and charges for the Policy to the Company.

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

*(Documents to be listed here)*

*(Additional Requirements may be listed here by number)*

SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

[1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.]

*(Additional Exceptions may be listed here by number)*

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| **Footnotes** | |
| [\*](#co_fnRef_I834d6770d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I834d8e80d6ee11ea8f41e1f6f2aa78) | Reprinted with permission from the American Land Title Association (ALTA). ALTA reserves all rights. The forms can be found online at: http://www.alta.org/forms/. |

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2 Title Ins. Law Appendix A1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I835d6d00d6ee11ea8f41e1f6f2a)**

APPENDIX A1. ALTA Short Form Commitment—2016

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| --- | --- |
| APPENDIX A1 |  |
| ALTA Short Form Commitment[\*](#co_footnote_I835d6d01d6ee11ea8f41e1f6f2a) | Adopted 12-01-2017 |
|  | Technical Corrections 04-02-2018 |
|  | |

[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) SHORT FORM COMMITMENT

FOR AN ALTA SHORT FORM RESIDENTIAL LOAN POLICY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE A SHORT FORM LOAN POLICY OF TITLE INSURANCE. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN [**ABSTRACT OF TITLE**](http://practicallawconnect.thomsonreuters.com/Document/Ieaf7162d641111e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN [**SCHEDULE A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B—Part II—Exceptions; and the Commitment Conditions of the American Land Title Association (ALTA) Commitment for Title Insurance (08-01-2016) incorporated herein by reference, Blank Title Insurance Company, a \_\_\_\_\_\_\_\_\_\_\_ (the “Company”), commits to issue the Policy described in Schedule A. This Commitment is effective as of the Commitment Date shown in Schedule A only when the Company has entered in Schedule A both a specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within *(insert the time period)* after the Commitment Date, this Commitment terminates and the Company’s liability and obligation end.

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

BLANK TITLE INSURANCE COMPANY

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

[Transaction Identification Data for reference only:

Issuing Agent:

Issuing Office:

Issuing Office’s ALTA® Registry ID:

Loan ID Number:

Commitment Number:

Issuing Office File Number:

Property Address:]

[Revision Number:]

SCHEDULE A

1. Commitment Date:

2. Short Form Policy to be issued:

[ALTA \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Proposed Policy Amount: $\_\_\_\_\_\_\_\_

Proposed Insured: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. The estate or interest in the Land described or referred to in this Commitment is fee simple.

4. The Title is, at the Commitment Date, vested in:

5. The Land is described as follows:

The following state statutes will be set forth on any ALTA 8.1-06 (Environmental Protection Lien) endorsement to be incorporated into the Policy:

SCHEDULE B, PART I

Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

2. Pay all taxes, charges, and assessments affecting the Land that are due and payable.

3. Pay the agreed amount for the estate or interest to be insured.

4. Pay the premiums, fees, and charges for the policy.

5. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

*(Documents to be listed here)*

*(Additional Requirements may be listed here by number)*

SCHEDULE B, PART II

Exceptions

In addition to the Exceptions from Coverage contained in the form of Short Form Loan Policy referred to in Item 2 in Schedule A, the Policy will not insure against loss or damages resulting from the terms and provisions of any easement identified in Schedule A and will include the following Exceptions unless cleared to the satisfaction of the Company:

[1. Any defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.]

*(Additional Exceptions may be listed here by number)*

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| **Footnotes** | |
| [\*](#co_fnRef_I835d6d00d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix B (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I83764c30d6ee11ea8f41e1f6f2a)**

APPENDIX B. ALTA Owner’s Policy Form B—1970[\*](#co_footnote_I83764c31d6ee11ea8f41e1f6f2a)

[**AMERICAN LAND TITLE ASSOCIATION**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))

**OWNER’S POLICY FORM B-1970**

**(Rev. 10/17/70 and 10/17/84)**

**BLANK TITLE INSURANCE COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, \_\_\_\_\_, a corporation, herein called the Company, insures as of Date of Policy shown in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys’ fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

2. Any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on such title;

3. Lack of a right of access to and from the land; or

4. Unmarketability of such title.

*In Witness Whereof*, \_\_\_\_\_\_\_\_\_\_\_ has caused this policy to be signed and sealed as of the date of policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

**SCHEDULE A**

|  |  |
| --- | --- |
| Number | Date of Policy Amount of Insurance |

1. Name of Insured:

2. The estate or interest in the land described herein and which is covered by this policy is:

Fee simple

3. The estate or interest referred to herein is at Date of Policy vested in the insured.

4. The land herein described is encumbered by the following mortgage or trust deed, and assignments:

and the mortgages or trust deeds, if any, shown in Schedule B hereof.

5. The land referred to in this policy is described as follows:

This policy valid only if Schedule B is attached.

**SCHEDULE B**

|  |  |
| --- | --- |
| Policy Number | \_\_\_\_\_ |
|  | Owners |

This policy does not insure against loss or damage by reason of the following exceptions:

General Exceptions:

(1) Rights or claims of parties in possession not shown by the public records.

(2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.

(3) Easements or claims of easements not shown by the public records.

(4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

(5) Taxes or special assessments which are not shown as existing liens by the public records.

Special Exceptions:

Countersigned

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

Schedule B of this Policy consists of \_\_\_\_\_ pages.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy:

1.

(a) Governmental police power.

(b) Any law, ordinance or governmental regulation relating to environmental protection.

(c) Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part.

(d) The effect of any violation of the matters excluded under (a), (b) or (c) above, unless notice of a defect, lien or encumbrance resulting from a violation has been recorded at Date of Policy in those records in which under state statutes deeds, mortgages, *lis pendens*, liens or other title encumbrances must be recorded in order to impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to purchasers of the land for value and without knowledge; provided, however, that without limitation, such records shall not be construed to include records in any of the offices of federal, state or local environmental protection, zoning, building, health or public safety authorities.

2. Rights of eminent domain unless notice of the exercise of such rights appears in the public records at Date of Policy.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company claimant prior to the date such insured claimant became an insured hereunder;

(c) resulting in no loss or damage to the insured claimant; or

(d) attaching or created subsequent to Date of Policy; or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**CONDITIONS AND STIPULATIONS**

**1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

(a) “insured”: the insured named in Schedule A, and, subject to any rights or defenses the Company may have had against the named insured, those who succeed to the interest of such insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) “insured claimant”: an insured claiming loss or damage hereunder.

(c) “knowledge”: actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

(d) “land”: the land described, specifically or by reference in Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term “land” does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) “mortgage”: mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument.

(f) “public records”: those records which by law impart constructive notice of matters relating to said land.

**2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE**

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a [**purchase money mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such estate or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

**3. DEFENSE AND PROSECUTION OF ACTIONS — NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or a defense interposed against an insured in an action to enforce a contract for a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

(b) The insured shall notify the Company promptly in writing (i) in case any action or proceeding is begun or defense is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice.

(c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy.

(d) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred.

**4. NOTICE OF LOSS—LIMITATION OF ACTION**

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

**5. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS**

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred up to the time of such payment or tender of payment, by the insured claimant and authorized by the Company.

**6. DETERMINATION AND PAYMENT OF LOSS**

(a) The liability of the Company under this policy shall in no case exceed the least of:

(i) the actual loss of the insured claimant; or,

(ii) the amount of insurance stated in Schedule A.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys’ fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

**7. LIMITATION OF LIABILITY**

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

**8. REDUCTION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys’ fees and expenses, shall reduce the amount of the insurance pro tanto. No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

**9. LIABILITY NONCUMULATIVE**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring either (a) a mortgage shown or referred to in Schedule B hereof which is a lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. The Company shall have the option to apply to the payment of any such mortgages any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed a payment under this policy to said insured owner.

**10. APPORTIONMENT**

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of said parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each such parcel by the Company and the insured at the time of the insurance of this policy and shown by an express statement herein or by an endorsement attached hereto.

**11. SUBROGATION UPON PAYMENT OR SETTLEMENT**

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, loss to the Company by reason of the impairment of the right of subrogation.

**12. LIABILITY LIMITED TO THIS POLICY**

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached here to signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**13. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to (fill in).

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| **Footnotes** | |
| [\*](#co_fnRef_I83764c30d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I83764c31d6ee11ea8f41e1f6f2aa78) | All publications of the American Land Title Association are copyrighted and are reprinted herein by specific permission from: American Land Title Association (ALTA) 1828 L Street, N.W., Suite 705, Washington DC 20036. 202-296-3671; E-Mail: service@alta.org; Web: http://www.alta.org. |

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2 Title Ins. Law Appendix B1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8396cc80d6ee11ea8f41e1f6f2a)**

APPENDIX B1. ALTA Owner’s Policy (October 17, 1992)[\*](#co_footnote_I8396f390d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Owner’s Policy |
|  | Revised 10/17/92 |
|  | |

**POLICY OF TITLE INSURANCE**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

2. Any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title;

3. Unmarketability of the title;

4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys’ fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRESIDENT

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SECRETARY

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

1.

(a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy; or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that is based on:

(a) the transaction creating the estate or interest insured by this policy being deemed a [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or fraudulent transfer; or

(b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

(i) to timely record the instrument of transfer; or

(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**SCHEDULE A**

**[File No. ] Policy No.**

**Amount of Insurance $**

**[Premium $ ]**

**a.m.**

|  |  |
| --- | --- |
| Date of Policy | [at p.m.] |

1. Name of Insured:

2. The estate or interest in the land which is covered by this policy is:

3. Title to the estate or interest in the land is vested in:

[4. The land referred to in this policy is described as follows:]

If Paragraph 4 is omitted, a Schedule C, captioned the same as Paragraph 4, must be used.

**SCHEDULE B**

**[File No. ] Policy No.**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

[POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO DESIRED BY ISSUING COMPANY]

[VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Ra, ETC.]

**CONDITIONS AND STIPULATIONS**

**1. DEFINITION OF TERMS.**

The following terms when used in this policy mean:

(a) “insured”: the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) “insured claimant”: an insured claiming loss or damage.

(c) “knowledge” or “known”: actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting the land.

(d) “land”: the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term “land” does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) “mortgage”: mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument.

(f) “public records”: records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, “public records” shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) “unmarketability of the title”: an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

**2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.**

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a [**purchase money mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.**

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and than only to the extent of the prejudice.

**4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company’s expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

**5. PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

(i) To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

(ii) Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company’s obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rate in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys’ fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys’ fees and expanses incurred in accordance with Section 4 of these Conditions and Stipulations.

**8. APPORTIONMENT.**

If the land described in Schedule [A][C] consists of two or more parcels which are not used as a single site, and a loss is established effecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rate basis as if the amount of insurance under this policy was divided pro rate as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

**9. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarkstability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

All payments under this policy, except payments made for costs, attorneys’ fees and expenses, shall reduce the amount of the insurance pro tanto.

**11. LIABILITY NONCUMULATIVE.**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

**12. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

(a) The Company’s Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company’s payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company’s right of subrogation.

(b) The Company’s Rights Against Non-insured Obligors.

The Company’s right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

**14. ARBITRATION**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys’ fees only if the laws of the state in which the land is located permit a court to award attorneys’ fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**16. SEVERABILITY.**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**17. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [ ] material optional

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| **Footnotes** | |
| [\*](#co_fnRef_I8396cc80d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I8396f390d6ee11ea8f41e1f6f2aa78) | All publications of the American Land Title Association are copyrighted and are reprinted herein by specific permission from: American Land Title Association (ALTA) 1828 L Street, N.W., Suite 705, Washington DC 20036. 202-296-3671; E-Mail: service@alta.org; Web: http://www.alta.org. |

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2 Title Ins. Law Appendix B2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I83c18600d6ee11ea8f41e1f6f2a)**

APPENDIX B2. ALTA Owner’s Policy (June 17, 2006)[\*](#co_footnote_I83c18601d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | (Owner’s Policy) |
|  | Adopted 6/17/06 |
|  |  |
|  | |

OWNER’S POLICY OF TITLE INSURANCE

Issued by

*Blank Title Insurance Company*

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the “Company”) insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

2. Any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title. This Covered Risk includes but is not limited to insurance against loss from

(a) A defect in the Title caused by

(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(ii) failure of any person or Entity to have authorized a transfer or conveyance;

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. [**Unmarketable Title**](http://practicallawconnect.thomsonreuters.com/Document/I8619d546135411e798dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

4. No right of access to and from the Land.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to~~\~~

(a) the occupancy, use, or enjoyment of the Land;

(b) the character, dimensions, or location of any improvement erected on the Land;

(c) the subdivision of land; or

(d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. Title being vested other than as stated in Schedule A or being defective

(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors’ rights laws; or

(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors’ rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys’ fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: PRESIDENT

BY: SECRETARY

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys’ fees, or expenses that arise by reason of:

 1.

(a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(i) the occupancy, use, or enjoyment of the Land;

(ii) the character, dimensions, or location of any improvement erected on the Land;

(iii) the subdivision of land; or

(iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

SCHEDULE A

Name and Address of Title Insurance Company:

|  |  |
| --- | --- |
| [File No.: ] | Policy No.: |
| Address Reference: |  |
| Amount of Insurance: $ | [Premium: $ ] |
| Date of Policy: | [at a.m./p.m.] |

1. Name of Insured:

2. The estate or interest in the Land that is insured by this policy is:

3. Title is vested in:

4. The Land referred to in this policy is described as follows:

SCHEDULE B

|  |  |
| --- | --- |
| [File No. ] | Policy No. |

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys’ fees, or expenses that arise by reason of:

1. [Policy may include regional exceptions if so desired by the issuing

2. Company.]

3. [Variable exceptions such as taxes, easements, CC&R’s, etc., shown here]

4.

CONDITIONS

1**.** DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) “Amount of Insurance”: The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.

(b) “Date of Policy”: The date designated as “Date of Policy” in Schedule A.

(c) “Entity”: A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) “Insured”: The Insured named in Schedule A.

(i) The term “Insured” also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) “Insured Claimant”: An Insured claiming loss or damage.

(f) “Knowledge” or “Known”: Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting the Title.

(g) “Land”: The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) “Mortgage”: Mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) “Public Records”: Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), “Public Records” shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) “Title”: The estate or interest described in Schedule A.

(k) “Unmarketable Title”: Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

2**.** CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a [**purchase money Mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3**.** NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company’s liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4**.** PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5**.** DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6**.** DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company’s expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company’s obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7**.** OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company’s obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8**.** DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys’ fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9**.** LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10**.** REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys’ fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11**.** LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12**.** PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13**.** RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys’ fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company’s right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14**.** ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (“Rules”). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15**.** LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16**.** SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17**.** CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18**.** NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE:

Bracketed [ ] material optional

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| **Footnotes** | |
| [\*](#co_fnRef_I83c18600d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix B3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I83cd45d0d6ee11ea8f41e1f6f2a)**

APPENDIX B3. Comparison of ALTA 1992 Owner’s Policy and ALTA 2006 Owner’s Policy[\*](#co_footnote_I83cd45d1d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Comparison of ALTA 1992 Owner’s Policy and ALTA 2006 |
|  | Adopted 6/17/06 |
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[​Image 1 within document in PDF format.](http://practicallawconnect.thomsonreuters.com/Link/Document/Blob/I3ef2adb027e111debb3fbef9dcfadfcf.pdf?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.DocLink))



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| **Footnotes** | |
| [\*](#co_fnRef_I83cd45d0d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix C (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I83e3db10d6ee11ea8f41e1f6f2a)**

APPENDIX C. ALTA Loan Policy 1970[\*](#co_footnote_I83e49e60d6ee11ea8f41e1f6f2a)

[**AMERICAN LAND TITLE ASSOCIATION**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))

**LOAN POLICY-1970**

**(Rev. 10/70 and 10/84)**

**BLANK TITLE INSURANCE COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS, \_\_\_\_\_ \_\_\_\_\_, a corporation, herein called the Company, insures, as of Date of Policy shown in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys’ fees and expenses which the Company may became obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;

2. Any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on such title;

3. Lack of a right of access to and from the land;

4. Unmarketability of such title;

5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon

(a) usury, or

(b) any consumer credit protection or truth in lending law;

6. The priority of any lien or encumbrance over the lien of the insured mortgage;

7. Any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; or

8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

*In Witness Whereof*, \_\_\_\_\_ has caused this policy to be signed and sealed as of the date of *policy* shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

**ALTA 1970 LOAN REV. FORM**

**SCHEDULE A**

|  |  |  |
| --- | --- | --- |
| Number | Date of Policy | Amount of Insurance |

1. Name of Insured:

2. The estate or interest referred to herein at Date of Policy vested in:

3. The estate or interest in the land described in this Schedule and which is encumbered by the insured mortgage is:

4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

5. The land referred to in this policy is described as on the description sheet annexed.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the following:

|  |  |
| --- | --- |
| Countersigned |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | NOTE: ATTACHED HERETO |
| Authorized Signatory | ADDED PAGES. |

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy:

1.

(a) Governmental police power.

(b) Any law, ordinance or governmental regulation relating to environmental protection.

(c) Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use, or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part.

(d) The effect of any violation of the matters excluded under (a), (b) or (c) above, unless notice of a defect, lien or encumbrance resulting from a violation has been recorded at Date of Policy in those records in which under state statutes deeds, mortgages, *lis pendens*, liens or other title encumbrances must be recorded in order to impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to purchasers of the land for value and without knowledge; provided, however, that without limitation, such records shall not be construed to include records in any of the offices of federal, state or local environmental protection, zoning, building, health or public safety authorities.

2. Rights of eminent domain unless notice of the exercise of such rights appears in the public records at Date of Policy.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company claimant prior to the date such insured claimant became an insured hereunder;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material).

4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable “doing business” laws of the state in which the land is situated.

**CONDITIONS AND STIPULATIONS**

**1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

(a) “insured”: the insured named in Schedule A. The term “insured” also includes (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of such indebtedness (reserving, however, all rights and defenses as to any such successor who acquires the indebtedness by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin or corporate or fiduciary successors that the Company would have had against the successor’s transferor), and further includes (ii) any governmental agency or instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing said indebtedness, or any part thereof, whether named as an insured herein or not, and (iii) the parties designated in paragraph 2(a) of these Conditions and Stipulations.

(b) “insured claimant”: an insured claiming loss or damage hereunder.

(c) “knowledge”: actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

(d) “land”: the land described, specifically or by reference Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term “land” does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) “mortgage”: mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument.

(f) “public records”: those records which by law impart constructive notice of matters relating to said land.

**2. (a) CONTINUATION OF INSURANCE AFTER ACQUISITION OF TITLE**

This policy shall continue in force as of Date of Policy in favor of an insured who acquires all or any part of the estate or interest in the land described in Schedule A by foreclosure, trustee’s sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage, and if the insured is a corporation, its transferee of the estate or interest so acquired, provided the transferee is the parent or [**wholly owned subsidiary**](http://practicallawconnect.thomsonreuters.com/Document/I1c63123aef2811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the insured; and in favor of any governmental agency or instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage; provided that the amount of insurance hereunder after such acquisition, exclusive of costs, attorneys’ fees and expenses which the Company may become obligated to pay, shall not exceed the least of:

(i) the amount of insurance stated in Schedule A;

(ii) the amount of the unpaid principal of the indebtedness as defined in paragraph 8 hereof, plus interest thereon, expenses of foreclosure and amounts advanced to protect the lien of the insured mortgage and secured by said insured mortgage at the time of acquisition of such estate or interest in the land; or

(iii) the amount paid by any governmental agency or instrumentality, if such agency or instrumentality is the insured claimant, in the acquisition of such estate or interest in satisfaction of its insurance contract or guaranty.

**(b) CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE**

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a [**purchase money mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of the estate or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

**3. DEFENSE AND PROSECUTION OF ACTIONS — NOTICE OF CLAIM TO BE GIVEN BY AN INSURED CLAIMANT**

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or defenses, restraining orders or injunctions interposed against a foreclosure of the insured mortgage or a defense interposed against an insured in an action to enforce a contract for a sale of the indebtedness secured by the insured mortgage, or a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

(b) The insured shall notify the Company promptly in writing (i) in case of any action or proceeding is begun or defense or restraining order or injunction is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice.

(c) The Company shall have the right, at its own cost, to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy.

(d) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred.

**4. NOTICE OF LOSS — LIMITATION OF ACTION**

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

**5. OPTIONS TO PAY OR OTHER WISE SETTLE CLAIMS**

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred up to the time of such payment or tender of payment by the insured claimant and authorized by the Company. In case loss or damage is claimed under this policy by an insured, the Company shall have the further option to purchase such indebtedness for the amount owing thereon together with all costs, attorneys’ fees and expenses which the Company is obligated hereunder to pay. If the Company offers to purchase said indebtedness as herein provided, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage and any collateral securing the same to the Company upon payment therefor as herein provided.

**6. DETERMINATION AND PAYMENT OF LOSS**

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the actual loss of the insured claimant; or,

(ii) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in paragraph 2(a) hereof; or,

(iii) the amount of the indebtedness secured by the insured mortgage as determined under paragraph 8 hereof, at the time the loss or damage insured against hereunder occurs, together with interest thereon.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys’ fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

**7. LIMITATION OF LIABILITY**

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, or the lien of the insured mortgage, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

**8. REDUCTION OF LIABILITY**

(a) All payments under this policy, except payments made for costs, attorneys’ fees and expenses, shall reduce the amount of the insurance pro tanto; provided, however, such payments, prior to the acquisition of title to said estate or interest as provided in paragraph 2(a) of these Conditions and Stipulations, shall not reduce pro tanto the amount of the insurance afforded hereunder except to the extent that such payments reduce the amount of the indebtedness secured by the insured mortgage.

Payment in full by any person or voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in paragraph 2(a) hereof.

(b) The liability of the Company shall not be increased by additional principal indebtedness created subsequent to Date of Policy, except as to amounts advanced to protect the lien of the insured mortgage and secured thereby.

No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

**9. LIABILITY NONCUMULATIVE**

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

**10. SUBROGATION UPON PAYMENT OR SETTLEMENT**

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant, except that the owner of the indebtedness secured by the insured mortgage may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness, provided such act occurs prior to receipt by the insured of notice of any claim of title or interest adverse to the title to the estate or interest or the priority of the lien of the insured mortgage and does not result in any loss of priority of the lien of the insured mortgage. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If a payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss, but such subrogation shall be in subordination to the insured mortgage. If loss of priority should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

**11. LIABILITY LIMITED TO THIS POLICY**

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached here to signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**12. NOTICES, WHERE SENT**

All notices required to be given the Company, and any statement in writing required to be furnished the Company shall be addressed to it at (fill in).

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| **Footnotes** | |
| [\*](#co_fnRef_I83e3db10d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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Joyce Palomar

**Appendices****[\*](#co_footnote_I8401ea60d6ee11ea8f41e1f6f2a)**

APPENDIX C1. ALTA Loan Policy (October 17, 1992)[\*](#co_footnote_I84021170d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Loan Policy |
|  | Revised 10/17/92 |
|  | |

**POLICY OF TITLE INSURANCE**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

2. Any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title;

3. Unmarketability of the title;

4. Lack of a right of access to and from the land;

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;

6. The priority of any lien or encumbrance over the lien of the insured mortgage;

7. Lack of priority of the lien of the insured mortgage over any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for services, labor or material:

(a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or

(b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;

8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys’ fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRESIDENT

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SECRETARY

**EXCLUSIONS FROM COVERAGE.**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

1.

(a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that is based on:

(a) the transaction creating the interest of the insured mortgagee being deemed a [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or fraudulent transfer; or

(b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of [**equitable subordination**](http://practicallawconnect.thomsonreuters.com/Document/I21050581ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); or

(c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:

(i) to timely record the instrument of transfer; or

(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**SCHEDULE A**

|  |  |  |
| --- | --- | --- |
|  | [File No. ] | Policy No. |
|  |  | Amount of Insurance $ |
|  |  | [Premium $ ] |
|  |  | a.m. |
| Date of Policy \_\_\_ |  | [at p.m.] |

1. Name of Insured:

2. The estate or interest in the land which is encumbered by the insured mortgage is:

3. Title to the estate or interest in the land is vested in:

4. The insured mortgage and assignments thereof, if any, are described as follows:

[5. The land referred to in this policy is described as follows:]

If Paragraph 5 is omitted, a Schedule C, captioned the same as Paragraph 5, must be used.

**SCHEDULE B**

**[File No. ] Policy No.**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay cost, attorneys’ fees or expenses) which arise by reason of:

**PART I**

[POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO DESIRED BY ISSUING COMPANY]

[VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Ra, ETC.]

Note: If there are matters which affect the title to the estate or interest in the land described in Schedule [A][C], but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Part I of Schedule B must contain the following statement:

Matters which affect the title to the estate or interest, but which are subordinate to the lien of the insured mortgage

**PART II**

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule [A][C] is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

**CONDITIONS AND STIPULATIONS**

**1. DEFINITION OF TERMS.**

The following terms when used in this policy mean:

(a) “insured”: the insured named in Schedule A. The term “insured” also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) “insured claimant”: an insured claiming loss or damage.

(c) “knowledge” or “known”: actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting the land.

(d) “land”: the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term “land” does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) “mortgage”: mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument.

(f) “public records”: records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, “public records” shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) “unmarketability of the title”: an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

**2. CONTINUATION OF INSURANCE.**

(a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee’s sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a [**purchase money mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) the Amount of Insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.**

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

**4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company’s expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

**5. PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company’s obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**7. DETERMINATION AND EXTENT OF LIABILITY.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys’ fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

**8. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

**9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

(a) All payments under this policy, except payments made for costs, attorneys’ fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

**10. LIABILITY NONCUMULATIVE.**

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

**11. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**12. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

(a) The Company’s Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured’s Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company’s right of subrogation.

(c) The Company’s Rights Against Non-insured Obligors.

The Company’s right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company’s right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

**13. ARBITRATION.**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the broach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys’ fees only if the laws of the state in which the land is located permit a court to award attorneys’ fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**15. SEVERABILITY.**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**16. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [ ] material optional

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| **Footnotes** | |
| [\*](#co_fnRef_I8401ea60d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix C2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84206ee0d6ee11ea8f41e1f6f2a)**

APPENDIX C2. Comparison of ALTA 1970 Loan Policy and ALTA 1992 Loan Policy[\*](#co_footnote_I842095f0d6ee11ea8f41e1f6f2a)

**COMPARISON OF 1970 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY WITH AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)**

|  |  |  |
| --- | --- | --- |
| 1970 LOAN POLICY | ALTA LOAN POLICY (10-17-92) | COMMENTS |
| SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, BLANK TITLE INSURANCE COMPANY, a blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys’ fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of: | SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of: | CLARIFIED. The insurer’s “obligation-to-defend” language has been relocated to the concluding paragraph of the Insuring Provisions. This was done to indicate that this obligation is separate from the indemnity obligations enumerated in the numbered paragraphs and specifically limited by cross reference to the Conditions and Stipulations. |
| 1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein; | 1. Title to the estate or interest described in Schedule A being vested other than as stated therein; | SAME COVERAGE |
| 2. Any defect in or lien or encumbrance on such title; | 2. Any defect in or lien or encumbrance on the title; | SAME COVERAGE |
| 3. Lack of a right of access to and from the land; | 3. Unmarketability of the title; | SAME COVERAGE. (See definition of “unmarketability of the title” at 1(g) of Conditions and Stipulations) |
| 4. Unmarketability of such title; | 4. Lack of a right of access to and from the land; | SAME COVERAGE |
| 5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon usury, or any consumer credit protection or truth in landing law; | 5. The invalidity or unenforceability of the lien of the insured mortgage upon the title; | SAME COVERAGE. (Note that exclusionary language now appears in Exclusion 6) |
| 6. The priority of any lien or encumbrances over the lien of the insured mortgage; | 6. The priority of any lien or encumbrances over the lien of the insured mortgage; | SAME COVERAGE |
| 7. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; or | 7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material; | REVISED. Although this language has been completely revised, the coverage for mechanics’ liens under the 1992 Policy is considered to be the same as the coverage in the 1970 Policy. |
|  | (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or | Please see Exclusion 6 and Section 8(d) (ii) of the Conditions and Stipulations for any limitation on coverage. |
|  | (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; |  |
| 8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens. | 8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens. |  |
|  | The Company will also pay the costs, attorneys’ fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations. |  |
| IN WITNESS WHEREOF, Blank Title Insurance Company has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A. | [Witness clause optional] |  |
| BLANK TITLE INSURANCE | BLANK TITLE INSURANCE |  |
| COMPANY | COMPANY |  |
| BY:\_\_\_\_\_\_\_\_\_\_\_ | BY:\_\_\_\_\_\_\_\_\_\_\_ |  |
| President | President |  |
| BY:\_\_\_\_\_\_\_\_\_\_\_ | BY:\_\_\_\_\_\_\_\_\_\_\_ |  |
| Secretary | Secretary |  |

|  |  |  |
| --- | --- | --- |
| 1970 LOAN POLICY | ALTA LOAN POLICY (10-17-92) | COMMENTS |
| EXCLUSIONS FROM COVERAGE | EXCLUSIONS FROM COVERAGE |  |
| The following matters are expressly excluded from the coverage of this policy: | The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of: | CLARIFICATION. Costs, attorneys’ fees and other expenses associated with matters excluded from coverage in this section are now specifically excluded. Since excluded matters are beyond the scope of policy coverage, title insurers undertake no liability with respect to these matters. This is a restatement of existing law. |
| 1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation. | 1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. | ADDED COVERAGE FOR INSURED. The new language clarifies previous Exclusion 1 and the police power portion of previous Exclusion 2 in the 1970 Policy. No new exclusions are added. In fact, policy coverage has been increased. Title insurers have now assumed responsibility for recorded notices of enforcement of excluded matters and recorded notices of defects liens, or encumbrances affecting title which result from a violation of excluded matters. |
|  | (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrances resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. | SAME COVERAGE. Please see above Exclusion 1 (b) for police power provision.  Note, however, added language covering a bona fide purchaser without knowledge of an existing taking. |
| 2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy. | 2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge. |  |
| 3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the Insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material); | 3. Defects, liens, encumbrances, adverse claims or other matters: | SAME COVERAGE, except the addition of Exclusion 3(e). |
|  | (a) created, suffered, assumed or agreed to by the insured claimant; |  |
|  | (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy; |  |
|  | (c) resulting in no loss or damage to the insured claimant; |  |
|  | (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or |  |
|  | (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage. | Exclusion 3(e) is a restated and clarified limitation of coverage. It excludes loss which arises because the insured claimant did not pay value. Examples would be mortgages acquired by descent or gift. |
| 4. Unenforceability of the lien of the Insured mortgage because of failure of the Insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable “doing business” laws of the state in which the land is situated. | 4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the Indebtedness, to comply with applicable doing business laws of the state in which the land is situated. | CLARIFICATION. The clarified language now specifically states that no coverage exists if the insured is unable to qualify to do business and as a result suffers loss because the mortgage lien cannot be enforced. |
|  | 5. Invalidity or unenforceability of the lien of the Insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law. | SAME COVERAGE. Exclusion 5 appeared in Insuring Provision 5 of the 1970 Policy. |
|  | 6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed In whole or In part by proceeds of the Indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance. | SAME COVERAGE. Exclusion 6 appeared as part of the mechanics’ lien priority Insuring Provision 7 of the 1970 Policy. The Insurer is not obligated to defend a claim of priority of a mechanics’ lien excluded by this provision. |
|  | 7. Any claim, which arises out of the transaction creating the interest of the mortgages insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that is based on: | CLARIFICATION. Exclusion 7 amplifies Exclusions 3(a) and (b). The language of the general portion of this exclusion was first included in the 1990 revisions. Subparagraphs (i), (ii) and (iii) are creditors’ rights exclusions which were added in the 1992 revisions to conform with language approved by the New York Department of Insurance and to clarify the intent of the drafters in 1990. |
|  | (a) the transaction creating the interest of the insured mortgages being deemed a fraudulent conveyance or fraudulent transfer; or |  |
|  | (b) the subordination of the interest of the insured mortgages as a result of the application of the doctrine of equitable subordination; or |  |
|  | (c) the transaction creating the interest of the insured mortgages being deemed a preferential transfer except where the preferential transfer results from the failure: |  |
|  | (i) to timely record the instrument of transfer; or |  |
|  | (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor. |  |

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| 1970 LOAN POLICY | ALTA LOAN POLICY (10-17-92) | COMMENTS |
| SCHEDULE A | SCHEDULE A |  |
| No. | [File No. ] Policy No. |  |
|  | Amount of Insurance $ |  |
|  | [Premium $ ] |  |
| Date of Policy: | a.m. |  |
| Amount of Insurance: $\_\_\_\_\_\_\_\_ | Date of Policy \_\_\_\_\_ [at p.m.] |  |
| 1. Name of Insured: | 1. Name of Insured; |  |
| 2. The estate or interest in the land described in this Schedule and which is encumbered by the insured mortgage is; (a fee, a leasehold. etc.) | 2. The estate or interest in the land which is encumbered by the insured mortgage is; |  |
| 3. The estate or interest referred to herein is at Date of Policy vested in; | 3. Title to the estate or interest in the land is vested in; | SAME COVERAGE. Among several minor language revisions, the most significant change (although not a limitation on coverage) is in Paragraph 3 referring to “title to the estate or interest.” The former provision vested “[t]he estate or interest.” The change makes the sentence consistent with Insuring Provision 1. |
| 4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows: | 4. The insured mortgage and assignments thereof, if any, are described as follows: |  |
| 5. The land referred to in this policy is described as follows: | [5. The land referred to in this policy is described as follows:] |  |
| (Items 2 and 3 may be combined and the various paragraphs shown in a different order if that is the Company’s practice. Item 5 may be modified by making a reference to the description contained in the mortgage or other instrument if that is the practice of the Company.) | If Paragraph 5 is omitted, a Schedule C, captioned the same as Paragraph 5, must be used. |  |

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| 1970 LOAN POLICY | ALTA LOAN POLICY (10-17-92) | COMMENTS |
| SCHEDULE B | SCHEDULE B |  |
| PART I | [File No. ] |  |
|  | Policy No. |  |
|  | EXCEPTIONS FROM COVERAGE |  |
| This policy does not insure against loss or damage by reason of the following: | This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of: | CLARIFICATION. Attorneys’ fees and other costs associated with matters excepted in Schedule B are now specifically excepted. It is consistent with the language of the preamble of Exclusions from Coverage and the comment there is equally applicable here. |
| (General exceptions applicable to the region shall be printed as items in this Schedule. Following such printed exceptions there would be typed the specific exceptions applicable to the estate or interest covered by the policy; if none, so state. | PART I |  |
|  | 1. |  |
|  | [POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO DESIRED BY THE ISSUING | SAME COVERAGE. There is no significant change in this part of Schedule B. |
| If general exceptions are adopted as standard by the companies of a region, and are printed in this Schedule, the caption of the policy should be amended to designate that it is a regional policy, e.g. Northeast Region. ALTA Loan Policy -1970. | 2. [DEBIRED BY ISSUING COMPANY] |  |
|  | 3. [VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Ra, ETC.] |  |
| If there are matters which affect the title to the estate or interest in the land described or referred to in Schedule A, but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Schedule B must contain the following statement: | 4. |  |
|  | Note: If there are matters which affect the title to the estate or interest in the land described in Schedule [A][C], but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Part I of Schedule B must contain the following statement: |  |
| ”Matters which affect the title to said estate or interest, but which are subordinate to the lien of the insured mortgage.” | ”Matters which affect the title to the estate or interest, but which are subordinate to the lien of the insured mortgage” |  |
| The quoted material would be set forth as a numbered exception in Schedule B.) |  |  |
| SCHEDULE B | PART II |  |
| PART II |  |  |
| In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters if any shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest: | In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule [A][C] is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest: | SAME COVERAGE, No change was made in this part of Schedule B. |
| (Here would be typed the specific subordinate matters which in the past some companies may have eliminated or omitted from the loan policy. If Schedule B consists of only one Part, then the designation should be only “Schedule B”) |  |  |

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| 1970 LOAN POLICY | ALTA LOAN POLICY (10-17-92) | COMMENTS |
| CONDITIONS AND STIPULATIONS | CONDITIONS AND STIPULATIONS |  |
| 1. DEFINITION OF TERMS | 1. DEFINITION OF TERMS. | REVISED. In 1987 two changes were made in the definition of “insured”: First, an obligor under Conditions and Stipulations Section 12(c) is excluded as an insured. An example of an excluded obligor would be a private mortgage insurance company. Second, a purchaser for value of the indebtedness without knowledge is not subject to rights and defenses the insured might have against its predecessor insured. |
| The following terms when used in this policy mean: | The following terms when used in this policy mean: |  |
| (a) “insured”: The insured named in Schedule A. The term “insured” also includes (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of such indebtedness (reserving, however, all rights and defenses as to any such successor who acquires the indebtedness by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin or corporate or fiduciary successors that the Company would have had against the successor’s transferor), and further includes (ii) any governmental agency or instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing said indebtedness, or any part thereof, whether named as an insured herein or not, and (iii) the parties designated in paragraph 2(a) of these Conditions and Stipulations. | (a) “insured”: the insured named in Schedule A. The term “insured” also includes |  |
|  | (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land); |  |
|  | (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not; | SAME MEANING. Includes “known” within the definition. |
|  | (iii) the parties designated in Section 2(a) of these Conditions and Stipulations. |  |
| (b) “insured claimant”: an insured claiming loss or damage hereunder. | (b) “insured claimant”: an insured claiming loss or damage. |  |
| (c) “knowledge”: actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records. | (c) “knowledge” or “known”: actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land. |  |
| (d) “land”: the land described, specifically or by reference in Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term “land” does not include any property beyond the lines of the area specifically described or referred to in schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy. | (d) “land”: the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term “land” does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy. | NO SIGNIFICANT CHANGE  CHANGE. Changes made in this definition reflect the insurer’s understanding of the meaning of “public records” under the 1970 Policy. This new definition limits public records to those established by state statutes and expands the scope of the definition to include the records of the clerk of the United States district court for purposes of coverage of federal environmental liens recorded there. [The records of the clerk’s office are not relevant in states having a statute which requires recording of federal liens in the office of the county recorder where the property is located.] |
| (e) “mortgage”: mortgage, deed of trust, trust deed, or other security instrument. | (e) “mortgage”: mortgage, deed of trust, trust deed, or other security instrument |  |
| (f) “public records”: those records which by law impart constructive notice of matters relating to said land. | (f) “public records”: records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, “public records” shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located. | IMPORTANT NOTE. This definition is a limitation upon coverage only where the words “public records” are used. In the pre-printed portion of the 1992 Policy, “public records” appears only in Exclusions 1(a), 1(b), 2 and 3(b). |
|  | (g) “unmarketability of the title”: an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title. | NEW. Insuring Provision 3 is now defined. Although new, no change in coverage was intended. Excluded or excepted matters affecting marketability are not covered in the 1970 and 1992 Policies. |
| 2. (a) Continuation of Insurance After Acquisition of Title | 2. CONTINUATION OF INSURANCE. |  |
|  | (a) After Acquisition of Title. |  |
| This policy shall continue in force as of Date of Policy in favor of an insured who acquires all or any part of the estate or interest in the land described in Schedule A by foreclosure, trustee’s sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage, and if the insured is a corporation, its transferee of the estate or interest so acquired, provided the transferee is the parent or wholly owned subsidiary of the insured; and in favor of any governmental agency or instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage; provided that the amount of insurance hereunder after such acquisition, exclusive of costs attorneys’ fees and expenses which the Company may become obligated to pay, shall not exceed the least of: | The coverage of this police shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee’s sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage. | REVISED. The entire section has been restructured to clarify the amount of insurance which an insured would have either after the acquisition of title pursuant to foreclosure or after a subsequent conveyance of the title. Please note that a reservation of rights and defenses is now retained by the insurer against transferees referred to in Section 2(a)(ii). Except as stated in Section 2(c), the coverage has not been changed. |
| (i) the amount of insurance stated in Schedule A; |  |  |
| (ii) the amount of the unpaid principal of the indebtedness as defined in paragraph 8 hereof, plus interest thereon, expenses of foreclosure and amounts advanced to protect the lien of the insured mortgage and secured by said insured mortgage at the time of acquisition of such estate or interest in the land; or |  |  |
| (iii) the amount paid by any governmental agency or instrumentality, if such agency or instrumentality is the insured claimant, in the acquisition of such estate or interest in satisfaction of its insurance contract or guaranty. |  |  |
| (b) Continuation of Insurance after Conveyance of Title | (b) After Conveyance of Title. |  |
| The coverage of this policy shall continue in force as of Date of Policy in favor of an insured so long as such insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such state or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured. | The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured. |  |
|  | (c) Amount of Insurance. |  |
|  | The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of: |  |
|  | (i) the Amount of Insurance stated in Schedule A; |  |
|  | (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or | NOTE. In addition to the usual items of expense included in the 1970 policy to determine the amount of insurance, amounts advanced pursuant to the mortgage to insure compliance with laws and reasonable amounts spent to prevent deterioration of improvements may also be included in the amount of insurance. |
|  | (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty. |  |
| 3. DEFENSE AND PROSECUTION OF ACTIONS NOTICE OF A CLAIM TO BE GIVEN BY AN INSURED A CLAIMANT | 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT. | SAME MEANING. In 1987 the order of the sections in the policy was changed to reflect the normal sequence of events which occurs when an insured files a claim under a policy of title insurance. Section 3 is a clarification of the former Section 3(b). |
| (a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or defenses, restraining orders or injunctions interposed against a foreclosure of the insured mortgage or a defense interposed against an insured in an action to enforce a contract for a sale of the indebtedness secured by the insured mortgage, or a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy. | The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as in the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice. |  |
| (b) The insured shall notify the Company promptly in writing (i) in case any action or proceeding is begun or defense or restraining order or injunction is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice. | 4. DEFENSE AND PROSECUTION OF ACTIONS: DUTY OF INSURED CLAIMANT TO COOPERATE. | CHANGE SHOULD BE NOTED. The insured must request its defense in writing. The insurer’s right to select counsel is now explicitly stated whereas it was implied in the 1970 Policy. The 1992 Policy, however, provides the insured with the opportunity to object for cause. |
|  | (a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy. | Section 4(a) subject matter was formerly set forth in Section 3(a). |
| (c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy. | (b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently. | CHANGE SHOULD BE NOTED. Sections 4(b), (c) and (d) subject matter was formerly set out in Sections 3(c), (d) and (e) respectively of the 1970 Policy. |
| (d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order. | (c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order. |  |
| (e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred. | (d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company’s expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation. |  |
| 4. NOTICE OF LOSS - LIMITATION OF ACTION | 5. PROOF OF LOSS OR DAMAGE |  |
| In addition to the notices required under paragraph 8(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage. | In addition to and after the notices required under Section 8 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage. | CHANGE SHOULD BE NOTED. This provision, which was formerly in Section 4 of the 1970 form, describes the contents of a proof of loss statement in greater detail. These provisions were added in 1987 to specify the responsibility of the insured to: cooperate in direct examination; submit relevant records; and permit similar cooperation from third parties. The duty of the insured to cooperate in these activities is implicit in the 1970 Policy. |
|  | In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorised representative of the Company to examine, inspect and copy all records, books, ledgers, checks. correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim. |  |
| 5. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS | 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY. |  |
| The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred up to the time of such payment or tender of payment by the insured claimant and authorized by the Company. In case loss or damage is claimed under this policy by an insured, the Company shall have the further option to purchase such indebtedness for the amount owing thereon together with all costs, attorneys’ fees and expenses which the Company is obligated hereunder to pay. If the Company offers to purchase said indebtedness as herein provided, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage and any collateral securing the same to the Company upon payment therefor as herein provided. | In case of a claim under this policy, the Company shall have the following additional options: | CHANGE SHOULD BE NOTED. This provision, formerly in Section 5, has been clarified to specifically authorize partial settlement with third parties in the name of the insured and with the insured a right implicit in the 1970 Policy. Provisions terminating an insurer’s obligations under the policy (other than the settlement payment made in exercise of an option by the insurer) have been clarified. |
|  | (a) To Pay or Tender Payment of the Amount of insurance or to Purchase the Indebtedness. |  |
|  | (i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or |  |
|  | (ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay. |  |
|  | If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor. |  |
|  | Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered tot he Company for cancellation. |  |
|  | (b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant. |  |
|  | (i) to pay or otherwise settle with parties for or in the name of an insured claimant claim insured against under this policy, together any costs, attorneys’ fees and expenses incurred by insured claimant which were authorized by Company up to the time of payment and which Company is obligated to pay; or |  |
|  | (ii) to pay or otherwise settle with the in claimant the loss or damage provided for policy, together with any coats, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay. |  |
|  | Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company’s obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation. |  |
| 6. DETERMINATION AND PAYMENT OF LOSS | 7. DETERMINATION AND EXTENT OF LIABILITY. |  |
| (a) The liability of the Company under this policy shall in no case exceed the least of: | This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described. | CHANGE SHOULD BE NOTED. Most of the subject matter in this action was formerly in Section 6 of the 1970 Policy. A preamble has been added (reflecting what insurers believed was the case under the 1970 Policy) that the policy is a contract of indemnity against actual monetary loss. Section 7(a)(ii) has been reworded and should be interpreted in conjunction with Section 2, 6, 8, and 9. Section 7(a)(iii) states the traditional method of determining the extent of loss under a title policy: difference in value with and without the matter resulting in a claim of loss covered by the policy. Section 7(b) sets forth the insurer’s liability to an insured lender which acquires title in a manner that continues the insurance in accordance with Section 2(a) of the Conditions and Stipulations. |
| (i) the actual loss of the insured claimant; or |  |  |
| (ii) the amount of insurance stated in Schedule A, Or, if applicable, the amount of insurance as defined in paragraph 2(a) hereof; or | (a) The liability of the Company under this policy shall not exceed the least of: |  |
| (iii) the amount of the indebtedness secured by the insured mortgage as determined under paragraph 6 hereof, at the time the loss or damage insured against hereunder occure, together with interest thereon. | (i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations; |  |
| (b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys’ fees and expenses in litigation carried on by such insured with the written authorisation of the Company. | (ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occure, together with interest thereon; or |  |
| (c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter. | (iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy. | NOTE. Section 6(c) of the 1970 Policy is now located in Section 11(b). |
|  | (b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations. |  |
|  | (c) The Company will pay only those costs, attorneys’ fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations. |  |
| 7. LIMITATION OF LIABILITY | 8. LIMITATION OF LIABILITY. |  |
| No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or ancumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, or the lien of the insured mortgage, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction and disposition of all appeals therefrom, adverse to the title or to the lion of the insured mortgage, as insured as provided in paragraph 8 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company. | (a) If the Company establishes the title, or removes the alleged defect, lien or ancumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby. | CLARIFICATION OF RESPONSIBILITIES. Paragraphs (a), (b), and (c) of Section 8 cover the same subject matter contained in Section 7 of the 1970 Policy. |
|  | (b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured. |  |
|  | (c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company. | Paragraph (d)(i) excludes liability for any indebtedness created subsequent to Date of Policy but covers advances made within policy limits to protect the mortgage lien and advances to prevent deterioration of improvements. |
|  | (d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy. | Paragraph (d)(ii) is a clarification of the mechanics’ lien priority coverage, conditioning the coverage upon the continuing obligation of the insured lender to advance funds under a construction mortgage. (Please refer to Insuring Provision 7 comments) |
|  |  | Paragraph (d) in general clarifier the fact that the ALTA Loan Policy is designed to insure fully funded mortgages or construction mortgages under which the insured lender has an obligation to advance. |
| 8. REDUCTION OF LIABILITY | 9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY. |  |
| (a) All payments under this policy, except payments made for costs, attorneys’ fees and expenses, shall reduce the amount of the insurance pro tanto; provided, however, such payments, prior to the acquisition of title to said estate or interest as provided in paragraph 2(a) of these Conditions and Stipulations, shall not reduce pro tanto the amount of the insurance afforded hereunder except to the extent that such payments reduce the amount of the indebtedness secured by the insured mortgage. | (a) All payments under this policy, except payments made for costs, attorneys’ fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage. | CLARIFICATION. Section 9 is largely a restatement and clarification of the previous provision (set forth substantially in Section 8(a) of the 1970 Policy). It now includes language, however, stating that after the insurance has been reduced, the insurance can be increased by accruing interest or advances made to protect the mortgage, not to exceed policy limits. Please note that the first paragraph of Section 8(b) of the 1970 Policy is set forth in Section 8(d)(i) of the 1992 Policy. The second paragraph of 8(b) of the 1970 Policy is now set forth in Section 11(a) of the 1992 Policy. |
| Payment in full by any person or voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in paragraph 2(a) hereof | (b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protest the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A. |  |
| (b) The liability of the Company shall not be increased by additional principal indebtedness created subsequent to Date of Policy, except as to amounts advanced to protect the lien of the insured mortgage and secured thereby. |  |  |
| No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company. | (c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations. |  |
| 9. LIABILITY NONCUMULATIVE | 10. LIABILITY NONCUMULATIVE. |  |
| If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage hereafter executed by an insured which is a charge or lien on thee state or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. | If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. | CHANGE. Section 10 of the 1992 Policy was set forth in Section 9 of the 1970 Policy. Since the ALTA Loan Policy is now the form of coverage requested by many second mortgage lenders, this provision has been modified so that it will be applicable, after acquisition of title by the insured, to mortgages assumed or agreed to by an insured as well as a mortgage thereafter executed by an insured. The payment of loss on a second mortgagee’s policy will also result in the reduction of the fee policy. The Section does not apply until a lender acquires title by foreclosure or other means in satisfaction of the insured mortgage. |
|  | 11. PAYMENT OF LOSS. |  |
|  | (a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company. | CLARIFICATION. These provisions were formerly set forth in the second paragraph of Section 5(b) and Section 6(c), respectively of the 1970 Policy. |
|  | (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter. |  |
| 10. SUBROGATION UPON PAYMENT OR SETTLEMENT | 12. SUBROGATION UPON PAYMENT OR SETTLEMENT. |  |
| Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant, except that the owner of the indebtedness secured by the insured mortgage may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness, provided such act occure prior to receipt by the insured of notice of any claim of title or interest adverse to the title to thee state or interest or the priority of the lien of the insured mortgage and does not result in any loss of priority of the lien of the insured mortgage. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to | (a) The Company’s Right of Subrogation. | SIGNIFICANT CHANGE. This section has been substantially rewritten to increase an insurer’s ability to recover from others sums paid to an insured in settlement of a claim of loss. |
|  | The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies. |  |
|  | If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection. |  |
|  | (b) The Insured’s Rights and Limitations. |  |
| the amount of said loss, but such subrogation shall be in subordination to the insured mortgage. If loss or priority should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation. | Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness. |  |
|  | When the permitted acts of the insured occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company’s right of subrogation. |  |
|  | (c) The Company’s Rights Against Non-insured Obligors. | NOTE: Section 12(o) was modified in 1967 to place the title insurer on an equal footing with other obligors and insurers covering the same risk. |
|  | The Company’s right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy. |  |
|  | The Company’s right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, not withstanding Section 1(a)(i) of these Conditions and Stipulations. |  |
|  | 18. ARBITRATION. |  |
|  | Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys’ fees only if the laws of the state in which the land is located parmit a court to award attorneys’ fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. | NOTE. It is believed that arbitration will provide an efficient means of resolution of disputes between the insurer and insured. Inclusion of the arbitration provision represents a good faith effort by the title industry to provide both the insurer and the insured a means of reducing escalating costs and delay in resolving coverage and valuation disputes. Copies of the Title Insurance Arbitration Rules are available upon request. |
|  | The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. |  |
|  | A copy of the Rules may be obtained from the Company upon request. |  |
| 11. LIABILITY LIMITED TO THIS POLICY | 14. LIABILITY LIMITED TO THIS THIS POLICY; POLICY ENTIRE CONTRACT. |  |
| This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. | (a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole. | CLARIFICATION. No change in meaning clarification only. |
| Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy. | (b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy. |  |
| No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company. | (c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company. |  |
| 12. NOTICES, WHERE SENT | 15. SEVERABILITY. | NEW. Invalidity or unenforceability of a policy provision will not render the balance of the policy invalid or unenforceable. |
| (Provisions relating to notice shall conform to the practice of the issuing company; the following is shown as an illustration.) | In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect. |  |
|  | 16. NOTICES, WHERE SENT. |  |
|  | All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in). |  |
|  | NOTE: Bracketed [ ] material optional | NOTE. Notice requirement standardized. |

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| **Footnotes** | |
| [\*](#co_fnRef_I84206ee0d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I842095f0d6ee11ea8f41e1f6f2aa78) | All publications of the American Land Title Association are copyrighted and are reprinted herein by specific permission from: American Land Title Association (ALTA) 1828 L Street, N.W., Suite 705, Washington DC 20036. 202-296-3671; E-Mail: service@alta.org; Web: http://www.alta.org. |

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2 Title Ins. Law Appendix C3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I843a1160d6ee11ea8f41e1f6f2a)**

APPENDIX C3. ALTA Loan Policy (June 17, 2006)[\*](#co_footnote_I843a1161d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | ALTA Loan Policy |
|  | Adopted 6/17/06 |
|  |  |
|  | |

LOAN POLICY OF TITLE INSURANCE

Issued by

*Blank Title Insurance Company*

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the “Company”) insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

2. Any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title. This Covered Risk includes but is not limited to insurance against loss from

(a) A defect in the Title caused by

(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(ii) failure of any person or Entity to have authorized a transfer or conveyance;

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. [**Unmarketable Title**](http://practicallawconnect.thomsonreuters.com/Document/I8619d546135411e798dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

4. No right of access to and from the Land.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(a) the occupancy, use, or enjoyment of the Land;

(b) the character, dimensions, or location of any improvement erected on the Land;

(c) the subdivision of land; or

(d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8.Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage

(a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(b) ailure of any person or Entity to have authorized a transfer or conveyance;

(c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(d) failure to perform those acts necessary to create a document by electronic means authorized by law;

(e) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(g) a defective judicial or administrative proceeding.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

(i) contracted for or commenced on or before Date of Policy; or

(ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title

(a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors’ rights laws; or

(b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors’ rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys’ fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:

PRESIDENT

BY:

SECRETARY

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys’ fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(i) the occupancy, use, or enjoyment of the Land;

(ii) the character, dimensions, or location of any improvement erected on the Land;

(iii) the subdivision of land; or

(iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction creating the lien of the Insured Mortgage, is

(a) a [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or fraudulent transfer, or

(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.: ] Policy No.:

Loan No.:

Address Reference:

Amount of Insurance: *$* [Premium: *$*]

Date of Policy:*[at a.m./p.m.]*

1. Name of Insured:

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:

3. Title is vested in:

4. The Insured Mortgage and its assignments, if any, are described as follows:

5. The Land referred to in this policy is described as follows:

[6. This policy incorporates by reference those [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) endorsements selected below:

4-06 (Condominium)

4.1-06

5-06 ([**Planned Unit Development**](http://practicallawconnect.thomsonreuters.com/Document/Ide70b10406f611eaadfea82903531a62/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)))

5.1-06

6-06 (Variable Rate)

6.2-06 (Variable Rate—Negative Amortization)

8.1-06 (Environmental Protection Lien) Paragraph b refers to the following state statute(s):

9-06 (Restrictions, Encroachments, Minerals)

13.1-06 (Leasehold Loan)

14-06(Future Advance-Priority)

14.1-06 (Future Advance-Knowledge)

14.3-06 (Future Advance-Reverse Mortgage)

22-06 (Location) The type of improvement is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the street address is as shown above.]

SCHEDULE B

[File No. ] Policy No.

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II,] t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys’ fees, or expenses that arise by reason of:

[PART I]

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) ”Amount of Insurance”: The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) ”Date of Policy”: The date designated as “Date of Policy” in Schedule A.

(c) ”Entity”: A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) ”Indebtedness”: The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

(i) the amount of the principal disbursed as of Date of Policy;

(ii) the amount of the principal disbursed subsequent to Date of Policy;

(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;

(iv) interest on the loan;

(v) the [**prepayment premiums**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9a1ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), exit fees, and other similar fees or penalties allowed by law;

(vi) the expenses of foreclosure and any other costs of enforcement;

(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;

(viii) the amounts to pay taxes and insurance; and

(ix) the reasonable amounts expended to prevent deterioration of improvements;

but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) ”Insured”: The Insured named in Schedule A.

(i) The term “Insured” also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has “control” of the “transferable record,” if the Indebtedness is evidenced by a “transferable record,” as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2)if the grantee wholly owns the named Insured, or

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) ”Insured Claimant”: An Insured claiming loss or damage.

(g) ”Insured Mortgage”: The Mortgage described in paragraph 4 of Schedule A.

(h) ”Knowledge” or “Known”: Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting the Title.

(i) ”Land”: The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) ”Mortgage”: Mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) ”Public Records”: Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), “Public Records” shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) ”Title”: The estate or interest described in Schedule A.

(m) ”Unmarketable Title”: Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a [**purchase money Mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company’s liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a)In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company’s expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company’s obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii)to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company’s obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys’ fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys’ fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company’s Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys’ fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured’s Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company’s right of subrogation.

(c) The Company’s Rights Against Noninsured Obligors

The Company’s right of subrogation includes the Insured’s rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company’s right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association (”Rules”). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [ ] material optional

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| **Footnotes** | |
| [\*](#co_fnRef_I843a1160d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix C4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8442eb00d6ee11ea8f41e1f6f2a)**

APPENDIX C4. Comparison of ALTA 1992 Loan Policy and ALTA 2006 Loan Policy[\*](#co_footnote_I8442eb01d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Comparison of ALTA 1992 Owner’s Policy and ALTA 2006 |
|  | Adopted 6/17/06 |
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[​Image 1 within document in PDF format.](http://practicallawconnect.thomsonreuters.com/Link/Document/Blob/I40c1a15027e111debb3fbef9dcfadfcf.pdf?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.DocLink))



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| **Footnotes** | |
| [\*](#co_fnRef_I8442eb00d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix D (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I844d9960d6ee11ea8f41e1f6f2a)**

APPENDIX D. ALTA Closing Protection Letter[\*](#co_footnote_I844d9961d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Closing Protection Letter |
|  | Revised 1/01/08 |
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[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) CLOSING PROTECTION LETTER

BLANK TITLE INSURANCE COMPANY

Name and Address of Addressee:

Date:

Name of Issuing Agent or Approved Attorney (hereafter, “Issuing Agent” or “Approved Attorney”, as the case may require):

|  |  |
| --- | --- |
|  | *[Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]* |
|  |  |
| Re: | Closing Protection Letter |

Dear

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 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 land, its assignees or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land

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, 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.

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 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 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.

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].

Any previous closing protection letter or similar agreement is hereby cancelled, except for closings of your real estate transactions for 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(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.)

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| **Footnotes** | |
| [\*](#co_fnRef_I844d9960d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix D1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84586ed0d6ee11ea8f41e1f6f2a)**

APPENDIX D1. ALTA Closing Protection Letter—Limitations[\*](#co_footnote_I845895e0d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Closing Protection Letter—Limitations |
|  | Revised 1/01/08 |
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[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) CLOSING PROTECTION LETTER—LIMITATIONS

BLANK TITLE INSURANCE COMPANY

Name and Address of Addressee:

Date:

Name of Issuing Agent or Approved Attorney (hereafter, “Issuing Agent” or “Approved Attorney”, as the case may require):

|  |  |
| --- | --- |
|  | *[Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]* |
| Re: | Closing Protection Letter |

Dear

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 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 land, its assignees or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land

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, 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.

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 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 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.

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 protection herein offered shall not extend to any transaction in which the funds you transmit to the Issuing Agent or Approved Attorney exceed $\_\_\_\_\_. The Company shall have no liability of any kind for the actions or omissions of the Issuing Agent or Approved Attorney in that 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 desire the protections of this letter to apply to that transaction. 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. 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.

6. 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.

7. 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.

8. The protection herein offered extends only to real property transactions in [State].

Any previous closing protection letter or similar agreement is hereby cancelled, except for closings of your real estate transactions for 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(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.)

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| **Footnotes** | |
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2 Title Ins. Law Appendix D2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8463e080d6ee11ea8f41e1f6f2a)**

APPENDIX D2. ALTA Closing Protection Letter—Single Transaction Limited Liability[\*](#co_footnote_I84640790d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Closing Protection Letter — |
|  | Single Transaction Limited Liability |
|  | Revised 1/01/08 |
|  | |

CLOSING PROTECTION LETTER — SINGLE TRANSACTION LIMITED LIABILITY

BLANK TITLE INSURANCE COMPANY

Name and Address of Addressee:

Date:

Name of Issuing Agent or Approved Attorney (hereafter, “Issuing Agent” or “Approved Attorney”, as the case may require):

|  |  |
| --- | --- |
|  | *[Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]* |
|  |  |
| Transaction (hereafter, “the Real Estate Transaction”): | |
|  |  |
| Re: | Closing Protection Letter |

Dear

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 the closing of the Real Estate Transaction 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 of the Real Estate Transaction;

(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; and

(C) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed $\_\_\_\_\_

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, or

2. Fraud, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closing 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.

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 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 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 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 the Real Estate Transaction if it is a purchase, lease or loan transaction 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 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.

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 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**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), 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.

Any previous closing protection letter or similar agreement is hereby cancelled with respect to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(The words “Underwritten Title Company”’ maybe inserted in lieu of Issuing Agent)

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| **Footnotes** | |
| [\*](#co_fnRef_I8463e080d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix D3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84714e00d6ee11ea8f41e1f6f2a)**

APPENDIX D3. ALTA Closing Protection Letter—Single Transaction[\*](#co_footnote_I84714e01d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Closing Protection Letter— |
|  | Single Transaction |
|  | Revised 12-1-11 04-02-14 |
|  | |

CLOSING PROTECTION LETTER

SINGLE TRANSACTION

BLANK TITLE INSURANCE COMPANY

Addressee:

Date:

Name of Issuing Agent or Approved Attorney (the “Issuing Agent” or “Approved Attorney,” as the case may require):

*[Name of Issuing Agent or Approved Attorney appears here.]*

Transaction (the “Real Estate Transaction”):

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, Blank Title Insurance Company (the “Company”), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent or Approved Attorney on or after the date of this letter, subject to the Conditions and Exclusions set forth below and provided:

(A) the Company issues or is contractually obligated to issue a Policy for Your protection in connection with the closing of the Real Estate Transaction;

(B) You are to be the (i) lender secured by the Insured Mortgage or (ii) purchaser or lessee of the Title;

(C) the aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed $\_\_\_\_\_; and

(D) Your loss is solely caused by:

1. failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:

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

(b) the obtaining of any document, specifically required by You, but only to the extent that the failure to obtain the document affects the status of the Title or the validity, enforceability, or priority of the lien of the Insured Mortgage;

or

2. fraud, theft, dishonesty, or misappropriation of 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 relates to the status of the Title or to the validity, enforceability, or priority of the lien of the Insured Mortgage.

Conditions and Exclusions

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney constitutes Your acceptance of this letter.

2. For purposes of this letter:

a. “Commitment” means the Company’s written contractual agreement to issue the Policy.

b. “Funds” means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.

c. “Policy” or “Policies” means the contract or contracts of title insurance, each in a form adopted by the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

d. “You” or “Your” means the Addressee of this letter, the borrower if the Land is solely improved by a one-to-four family residence, and subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,

(i) the assignee of the Insured Mortgage; and

(ii) the warehouse lender in connection with the Insured Mortgage.

e. “Indebtedness,” “Insured Mortgage,” “Land,” and “Title” have the same meaning given them in the American Land Title Association Loan Policy (06-17-06).

3. The Company shall have no liability under this closing protection letter for loss arising out of:

a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection 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 shall not be deemed to require inconsistent title insurance protection;

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 loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit the Funds in a bank that You designated by name;

c. any constitutional or [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 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. This subsection does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;

d. fraud, theft, misappropriation, dishonesty, or negligence of Your employee, agent, attorney, or broker;

e. Your settlement or release of any claim without the Company’s written consent;

f. any matters created, suffered, assumed, or agreed to or actually known by You;

g. Federal consumer financial law, as defined in [12 U.S.C. § 5481(14)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS5481&originatingDoc=I9eaf10f263f811e496f9b4d0a15b84b8&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), or other federal or state laws relating to truth-in-lending, a borrower’s ability to repay a loan, qualified mortgages, consumer protection, or predatory lending;

h. federal or state laws establishing the standards or requirements for asset-backed [**securitization**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) including, but not limited to, exemption from credit risk retention;

i. the periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land relating to the Real Estate Transaction; or

j. the 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](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012823&cite=26USCAS1031&originatingDoc=I9eaf10f263f811e496f9b4d0a15b84b8&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).

4. If the closing is to be conducted by an Approved Attorney, a Commitment must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.

5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company’s liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.

6. The Company’s liability for loss under this letter shall 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; or

d. the value of the Title insured or to be insured under the Policy at the time written notice of a claim is made under this letter.

7. If You are not a purchaser, borrower, or lessee, You must hold the Indebtedness both at the time that the Company is notified of a claim pursuant to this letter and at the time that payment is made to make a claim for indemnification under this letter.

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

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. Other than as expressly provided in this letter, 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 with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

10. 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 date of the transmittal of Funds. The condition that the Company must be provided with written notice under this provision shall not be excused by lack of prejudice to the Company.

11. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Company is prejudiced by Your failure to provide prompt notice, the Company’s liability to You under this letter shall be reduced to the extent of the prejudice.

12. 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.

13. The protection of this letter extends only to real estate in *[State]*, and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its 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 appropriate jurisdiction.

[14. 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. There shall be no right for any claim under this letter to be arbitrated or litigated on a [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) action basis. 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.]

This closing protection letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

(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.)

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| **Footnotes** | |
| [\*](#co_fnRef_I84714e00d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix D4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84774170d6ee11ea8f41e1f6f2a)**

APPENDIX D4. ATLA Closing Protection Letter—Multiple Transactions[\*](#co_footnote_I84776880d6ee11ea8f41e1f6f2a)

[​Image 1 within document in PDF format.](http://practicallawconnect.thomsonreuters.com/Link/Document/Blob/I3457ccc050a611e494230000833f9e5b.pdf?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.DocLink))



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| **Footnotes** | |
| [\*](#co_fnRef_I84774170d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix D5 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I848a7b50d6ee11ea8f41e1f6f2a)**

APPENDIX D5. ALTA Closing Protection Letter—Single Transaction (December 1, 2015)[\*](#co_footnote_I848a7b51d6ee11ea8f41e1f6f2a)

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| APPENDIX D5 |  |
| ALTA Closing Protection Letter–Single Transaction | Adopted 12-01-2015 |
|  | Revised 12-01-2018 |
|  | |

CLOSING PROTECTION LETTER

SINGLE TRANSACTION

BLANK TITLE INSURANCE COMPANY

“Addressee”:

“Date”:

“Issuing Agent” or “Approved Attorney”:

[Issuing Office:

Issuing Office’s [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))® Registry ID:]

“Real Estate Transaction”:

[Seller:

Buyer:

Street Address:

Loan Number:]

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, *Blank Title Insurance Company* (the “Company”), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent or Approved Attorney on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

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) 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 $\_\_\_\_\_\_\_\_; and

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

(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 to the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

CONDITIONS AND EXCLUSIONS

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

2. For purposes of this letter:

(a) “Commitment” means the Company’s written contractual agreement to issue the Policy.

(b) “Funds” means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.

(c) “Policy” means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

(d) “You” or “Your” means:

(i) the Addressee of this letter;

(ii) the borrower, if the Land is improved solely by a one-to-four family residence; and

(iii) subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,

(A) the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and

(B) the warehouse lender in connection with the Insured Mortgage.

(e) “Indebtedness,” “Insured Mortgage,” “Knowledge” or “Known,” “Land,” and “Title” have the same meaning given them in the American Land Title Association Loan Policy.

3. The Company shall have no liability 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 shall 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**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 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. This Section 3.(c) does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;

(d) defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or other matter in connection with the Real Estate Transaction. This Section 3.(d) does not affect the coverage afforded 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;

(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. This Section 3.(i) does not affect the coverage afforded in the Policy;

(j) Federal consumer financial law, as defined in [12 U.S.C. § 5481(14)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS5481&originatingDoc=I9ed25fe5918311e7b501e7ff7966d079&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), actions under [12 U.S.C. § 5531](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS5531&originatingDoc=I9ed25fe5918311e7b501e7ff7966d079&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), or other federal or state laws relating to truth-in-lending, a borrower’s ability to repay a loan, qualified mortgages, consumer protection, or predatory lending, 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**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 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](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012823&cite=26USCAS1031&originatingDoc=I9ed25fe5918311e7b501e7ff7966d079&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 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 [perpetrated by anyone other than the Company, Issuing Agent, or Approved Attorney].

4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.

5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company’s liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.

6. The Company’s liability for loss under this letter shall 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 Section 3 of the Requirements.

7. The Company will be liable only to the holder of the Indebtedness at the time that payment is made. This Section 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 shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.

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 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 with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

10. 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 date of the transmittal of Funds. The condition that the Company must be provided with written notice under this Section 10 shall not be excused by lack of prejudice to the Company.

11. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Company is prejudiced by Your failure to provide prompt notice, the Company’s liability to You under this letter shall be reduced to the extent of the prejudice.

12. Whenever requested by the Company, You, at the Company’s expense, shall:

(a) give the Company all reasonable aid in:

(i) securing evidence, obtaining witnesses, prosecuting, or defending any action or proceeding, or effecting any settlement; and

(ii) any other lawful act that in the opinion of the Company may be necessary to enable the Company’s investigation and determination of its liability under this letter;

(b) deliver to the Company any records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and

(c) submit to an examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.

13. 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.

14. The protection of this letter extends only to real estate in [*State*], and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its 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 appropriate jurisdiction.

15. There shall be no right for any claim under this letter to be arbitrated or litigated on a [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) action basis.

[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.]]

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

|  |
| --- |
| *(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.)* |
|  |
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|  |
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| **Footnotes** | |
| [\*](#co_fnRef_I848a7b50d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I848a7b51d6ee11ea8f41e1f6f2aa78) | Reprinted with permission from the American Land Title Association (ALTA). ALTA reserves all rights. The forms can be found online at: http://www.alta.org/forms/. |

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2 Title Ins. Law Appendix D6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84985e00d6ee11ea8f41e1f6f2a)**

APPENDIX D6. ALTA Closing Protection Letter—Multiple Transactions (December 1, 2015)[\*](#co_footnote_I84985e01d6ee11ea8f41e1f6f2a)

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| --- | --- |
| APPENDIX D6 |  |
| ALTA Closing Protection Letter–Multiple Transactions | Adopted 12-01-2015 |
|  | Revised 12-01-2018 |
|  | |

CLOSING PROTECTION LETTER

MULTIPLE TRANSACTIONS

BLANK TITLE INSURANCE COMPANY

“Addressee”:

“Date”:

“Issuing Agent” or “Approved Attorney”:

[Issuing Office:

Issuing Office’s [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))® Registry ID:]

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, *Blank Title Insurance Company* (the “Company”), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of any real estate transaction (the “Real Estate Transaction”) conducted by the Issuing Agent or Approved Attorney on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

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 lender secured by the Insured Mortgage on 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 $\_\_\_\_\_\_\_\_; and

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

(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 to the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

CONDITIONS AND EXCLUSIONS

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

2. For purposes of this letter:

(a) “Commitment” means the Company’s written contractual agreement to issue the Policy.

(b) “Funds” means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.

(c) “Policy” means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

(d) “You” or “Your” means:

(i) the Addressee of this letter;

(ii) the borrower, if the Land is improved solely by a one-to-four family residence; and

(iii) subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,

(A) the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and

(B) the warehouse lender in connection with the Insured Mortgage.

(e) “Indebtedness,” “Insured Mortgage,” “Knowledge” or “Known,” “Land,” and “Title” have the same meaning given them in the American Land Title Association Loan Policy.

3. The Company shall have no liability 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 shall 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**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 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. This Section 3.(c) does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;

(d) defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or other matter in connection with the Real Estate Transaction. This Section 3.(d) does not affect the coverage afforded 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;

(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. This Section 3.(i) does not affect the coverage afforded in the Policy;

(j) Federal consumer financial law, as defined in [12 U.S.C. § 5481(14)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS5481&originatingDoc=I9ed25fe8918311e7b501e7ff7966d079&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), actions under [12 U.S.C. § 5531](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=12USCAS5531&originatingDoc=I9ed25fe8918311e7b501e7ff7966d079&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), or other federal or state laws relating to truth-in-lending, a borrower’s ability to repay a loan, qualified mortgages, consumer protection, or predatory lending, 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**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9d0ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 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](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1012823&cite=26USCAS1031&originatingDoc=I9ed25fe8918311e7b501e7ff7966d079&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); 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 [perpetrated by anyone other than the Company, Issuing Agent, or Approved Attorney].

4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.

5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company’s liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.

6. The Company’s liability for loss under this letter shall 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 Section 3 of the Requirements.

7. The Company will be liable only to the holder of the Indebtedness at the time that payment is made. This Section 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 shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.

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 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 with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

10. 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 date of the transmittal of Funds. The condition that the Company must be provided with written notice under this Section 10 shall not be excused by lack of prejudice to the Company.

11. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Company is prejudiced by Your failure to provide prompt notice, the Company’s liability to You under this letter shall be reduced to the extent of the prejudice.

12. Whenever requested by the Company, You, at the Company’s expense, shall:

(a) give the Company all reasonable aid in:

(i) securing evidence, obtaining witnesses, prosecuting, or defending any action or proceeding, or effecting any settlement; and

(ii) any other lawful act that in the opinion of the Company may be necessary to enable the Company’s investigation and determination of its liability under this letter;

(b) deliver to the Company any records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and

(c) submit to an examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.

13. 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.

14. The protection of this letter extends only to real estate in [*State*], and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its 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 appropriate jurisdiction.

15. There shall be no right for any claim under this letter to be arbitrated or litigated on a [**class**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e97fef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) action basis.

[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.]]

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

|  |
| --- |
| *(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.)* |
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| **Footnotes** | |
| [\*](#co_fnRef_I84985e00d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix E (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84b64640d6ee11ea8f41e1f6f2a)**

APPENDIX E. ALTA Homeowner’s Policy of Title Insurance for a One-to-Four Family Residence[\*](#co_footnote_I84b64641d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Homeowner’s Policy |
|  | Revised 1/01/08 |
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HOMEOWNER’S POLICY OF TITLE INSURANCE

FOR A ONE-TO-FOUR FAMILY RESIDENCE

Issued By

BLANK TITLE INSURANCE COMPANY

**OWNER’S INFORMATION SHEET**

Your [**Title Insurance Policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is a legal contract between You and Us.

It applies only to a one-to-four family residence and only if each insured named in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is a Natural Person. If the Land described in Schedule A of the Policy is not an improved residential lot on which there is located a one-to-four family residence, or if each insured named in Schedule A is not a Natural Person, contact Us immediately.

The Policy insures You against actual loss resulting from certain Covered Risks. These Covered Risks are listed beginning on page of the Policy. The Policy is limited by:

• Provisions of Schedule A

• Exceptions in Schedule B

• Our Duty To Defend Against Legal Actions On Page \_\_\_

• Exclusions on page \_

• Conditions on pages \_ and \_.

You should keep the Policy even if You transfer Your Title to the Land. It may protect against claims made against You by someone else after You transfer Your Title.

IF YOU WANT TO MAKE A CLAIM, SEE SECTION 3 UNDER CONDITIONS ON PAGE \_.

The premium for this Policy is paid once. No additional premium is owed for the Policy.

This sheet is not Your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail Your rights and obligations and Our rights and obligations. Since the Policy—and not this sheet—is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If You have any questions about Your Policy, contact:

BLANK TITLE INSURANCE COMPANY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| SCHEDULE B — EXCEPTIONS | | | \_ |

As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing at the address shown in Section 3 of the Conditions.

**OWNER’S COVERAGE STATEMENT**

This Policy insures You against actual loss, including any costs, attorneys’ fees and expenses provided under this Policy. The loss must result from one or more of the Covered Risks set forth below. This Policy covers only Land that is an improved residential lot on which there is located a one-to-four family residence and only when each insured named in Schedule A is a Natural Person.

Your insurance is effective on the Policy Date. This Policy covers Your actual loss from any risk described under Covered Risks if the event creating the risk exists on the Policy Date or, to the extent expressly stated in Covered Risks, after the Policy Date.

Your insurance is limited by all of the following:

• The Policy Amount

• For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A

• The Exceptions in Schedule B

• Our Duty To Defend Against Legal Actions

• The Exclusions on page

• The Conditions on pages and.

**COVERED RISKS**

The Covered Risks are:

1. Someone else owns an interest in Your Title.

2. Someone else has rights affecting Your Title because of leases, contracts, or options.

3. Someone else claims to have rights affecting Your Title because of forgery or impersonation.

4. Someone else has an easement on the Land.

5. Someone else has a right to limit Your use of the Land.

6. Your Title is defective. Some of these defects are:

a. Someone else’s failure to have authorized a transfer or conveyance of your Title.

b. Someone else’s failure to create a valid document by electronic means.

c. A document upon which Your Title is based is invalid because it was not properly signed, sealed, acknowledged, delivered or recorded.

d. A document upon which Your Title is based was signed using a falsified, expired, or otherwise invalid power of attorney.

e. A document upon which Your Title is based was not properly filed, recorded, or indexed in the Public Records.

f. A defective judicial or administrative proceeding.

7. Any of Covered Risks 1 through 6 occurring after the Policy Date.

8. Someone else has a lien on Your Title, including a:

a. lien of real estate taxes or assessments imposed on Your Title by a governmental authority that are due or payable, but unpaid;

b. Mortgage;

c. judgment, state or federal tax lien;

d. charge by a homeowner’s or condominium association; or

e. lien, occurring before or after the Policy Date, for labor and material furnished before the Policy Date.

9. Someone else has an [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on Your Title.

10. Someone else claims to have rights affecting Your Title because of fraud, duress, incompetency or incapacity.

11. You do not have actual vehicular and pedestrian access to and from the Land, based upon a legal right.

12. You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B. However, You are not covered for any violation that relates to:

a. any obligation to perform maintenance or repair on the Land; or

b. environmental protection of any kind, including hazardous or toxic conditions or substances

unless there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists. Our liability for this Covered Risk is limited to the extent of the violation stated in that notice.

13. Your Title is lost or taken because of a violation of any covenant, condition or restriction, which occurred before You acquired Your Title, even if the covenant, condition or restriction is excepted in Schedule B.

14. The violation or enforcement of those portions of any law or government regulation concerning:

a. building;

b. zoning;

c. land use;

d. improvements on the Land;

e. land division; or

f. environmental protection,

if there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists or declaring the intention to enforce the law or regulation. Our liability for this Covered Risk is limited to the extent of the violation or enforcement stated in that notice.

15. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 14 if there is a notice recorded in the Public Records, describing any part of the Land, of the enforcement action or intention to bring an enforcement action. Our liability for this Covered Risk is limited to the extent of the enforcement action stated in that notice.

16. Because of an existing violation of a subdivision law or regulation affecting the Land:

a. You are unable to obtain a building permit;

b. You are required to correct or remove the violation; or

c. someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.

The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

17. You lose Your Title to any part of the Land because of the right to take the Land by condemning it, if:

a. there is a notice of the exercise of the right recorded in the Public Records and the notice describes any part of the Land; or

b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

18. You are forced to remove or remedy Your existing structures, or any part of them—other than boundary walls or fences—because any portion was built without obtaining a building permit from the proper government office. The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

19. You are forced to remove or remedy Your existing structures, or any part of them, because they violate an existing zoning law or zoning regulation. If You are required to remedy any portion of Your existing structures, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

20. You cannot use the Land because use as a single-family residence violates an existing zoning law or zoning regulation.

21. You are forced to remove Your existing structures because they encroach onto Your neighbor’s land. If the encroaching structures are boundary walls or fences, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

22. Someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it because Your neighbor’s existing structures encroach onto the Land.

23. You are forced to remove Your existing structures which encroach onto an easement or over a building set-back line, even if the easement or building set-back line is excepted in Schedule B.

24. Your existing structures are damaged because of the exercise of a right to maintain or use any easement affecting the Land, even if the easement is excepted in Schedule B.

25. Your existing improvements (or a replacement or modification made to them after the Policy Date), including lawns, shrubbery or trees, are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.

26. Someone else tries to enforce a discriminatory covenant, condition or restriction that they claim affects Your Title which is based upon race, color, religion, sex, handicap, familial status, or national origin.

27. A taxing authority assesses supplemental real estate taxes not previously assessed against the Land for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date.

28. Your neighbor builds any structures after the Policy Date—other than boundary walls or fences—which encroach onto the Land.

29. Your Title is unmarketable, which allows someone else to refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.

30. Someone else owns an interest in Your Title because a court order invalidates a prior transfer of the title under federal bankruptcy, state insolvency, or similar creditors’ rights laws.

31. The residence with the address shown in Schedule A is not located on the Land at the Policy Date.

32. The map, if any, attached to this Policy does not show the correct location of the Land according to the Public Records.

**OUR DUTY TO DEFEND AGAINST LEGAL ACTIONS**

We will defend Your Title in any legal action only as to that part of the action which is based on a Covered Risk and which is not excepted or excluded from coverage in this Policy. We will pay the costs, attorneys’ fees, and expenses We incur in that defense.

We will not pay for any part of the legal action which is not based on a Covered Risk or which is excepted or excluded from coverage in this Policy.

We can end Our duty to defend Your Title under Section 4 of the Conditions.

THIS POLICY IS NOT COMPLETE WITHOUT SCHEDULES A AND B.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRESIDENT

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SECRETARY

**EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys’ fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:

a. building;

b. zoning;

c. land use;

d. improvements on the Land;

e. land division; and

f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.

3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Risks:

a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;

b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;

c. that result in no loss to You; or

d. that first occur after the Policy Date — this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.

5. Failure to pay value for Your Title.

6. Lack of a right:

a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and

b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

**CONDITIONS**

**1. DEFINITIONS**

**a. Easement**

— the right of someone else to use the Land for a special purpose.

**b. Known**

— things about which You have actual knowledge. The words “Know” and “Knowing” have the same meaning as Known.

**c. Land**

— the land or condominium unit described in paragraph 3 of Schedule A and any improvements on the Land which are real property.

**d. Mortgage**

— a mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed or other security instrument.

**e. Natural Person**

— a human being, not a commercial or legal organization or entity. Natural Person includes a trustee of a Trust even if the trustee is not a human being.

**f. Policy Date**

— the date and time shown in Schedule A. If the insured named in Schedule A first acquires the interest shown in Schedule A by an instrument recorded in the Public Records later than the date and time shown in Schedule A, the Policy Date is the date and time the instrument is recorded.

**g. Public Records**

— records that give [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting Your Title, according to the state statutes where the Land is located.

**h. Title**

— the ownership of Your interest in the Land, as shown in Schedule A.

**i. Trust**

— a living trust established by a human being for estate planning.

**j. We/Our/Us**

— Blank Title Insurance Company.

**k. You/Your**

— the insured named in Schedule A and also those identified in Section 2.b. of these Conditions.

**2. CONTINUATION OF COVERAGE**

a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else.

b. This Policy also insures:

(1) anyone who inherits Your Title because of Your death;

(2) Your spouse who receives Your Title because of dissolution of Your marriage;

(3) the trustee or successor trustee of a Trust to whom You transfer Your Title after the Policy Date; or

(4) the beneficiaries of Your Trust upon Your death.

c. We may assert against the insureds identified in Section 2.b. any rights and defenses that We have against any previous insured under this Policy.

**3. HOW TO MAKE A CLAIM**

**a. Prompt Notice Of Your Claim**

(1) As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing.

(2) Send Your notice to Blank Title Insurance Company, \_\_\_\_\_, Attention: Claims Department. Please include the Policy number shown in Schedule A, and the county and state where the Land is located. Please enclose a copy of Your policy, if available.

(3) If You do not give Us prompt notice, Your coverage will be reduced or ended, but only to the extent Your failure affects Our ability to resolve the claim or defend You.

**b. Proof Of Your Loss**

(1) We may require You to give Us a written statement signed by You describing Your loss which includes:

(a) the basis of Your claim;

(b) the Covered Risks which resulted in Your loss;

(c) the dollar amount of Your loss; and

(d) the method You used to compute the amount of Your loss.

(2) We may require You to make available to Us records, checks, letters, contracts, insurance policies and other papers which relate to Your claim. We may make copies of these papers.

(3) We may require You to answer questions about Your claim under oath.

(4) If you fail or refuse to give Us a statement of loss, answer Our questions under oath, or make available to Us the papers We request, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.

**4. OUR CHOICES WHEN WE LEARN OF A CLAIM**

a. After We receive Your notice, or otherwise learn, of a claim that is covered by this Policy, Our choices include one or more of the following:

(1) Pay the claim;

(2) Negotiate a settlement;

(3) Bring or defend a legal action related to the claim;

(4) Pay You the amount required by this Policy;

(5) End the coverage of this Policy for the claim by paying You Your actual loss resulting from the Covered Risk, and those costs, attorneys’ fees and expenses incurred up to that time which We are obligated to pay;

(6) End the coverage described in Covered Risk 16, 18, 19 or 21 by paying You the amount of Your insurance then in force for the particular Covered Risk, and those costs, attorneys’ fees and expenses incurred up to that time which We are obligated to pay;

(7) End all coverage of this Policy by paying You the Policy Amount then in force, and those costs, attorneys’ fees and expenses incurred up to that time which We are obligated to pay;

(8) Take other appropriate action.

b. When We choose the options in Sections 4.a. (5), (6) or (7), all Our obligations for the claim end, including Our obligation to defend, or continue to defend, any legal action.

c. Even if We do not think that the Policy covers the claim, We may choose one or more of the options above. By doing so, We do not give up any rights.

**5. HANDLING A CLAIM OR LEGAL ACTION**

a. You must cooperate with Us in handling any claim or legal action and give Us all relevant information.

b. If You fail or refuse to cooperate with Us, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.

c. We are required to repay You only for those settlement costs, attorneys’ fees and expenses that We approve in advance.

d. We have the right to choose the attorney when We bring or defend a legal action on Your behalf. We can appeal any decision to the highest level. We do not have to pay Your claim until the legal action is finally decided.

e. Whether or not We agree there is coverage, We can bring or defend a legal action, or take other appropriate action under this Policy. By doing so, We do not give up any rights.

**6. LIMITATION OF OUR LIABILITY**

a. After subtracting Your Deductible Amount if it applies, We will pay no more than the least of:

(1) Your actual loss;

(2) Our Maximum Dollar Limit of Liability then in force for the particular Covered Risk, for claims covered only under Covered Risk 16, 18, 19 or 21; or

(3) the Policy Amount then in force.

and any costs, attorneys’ fees and expenses that We are obligated to pay under this Policy.

b. If We pursue Our rights under Sections 4.a.(3) and 5.e. of these Conditions and are unsuccessful in establishing the Title, as insured:

(1) the Policy Amount then in force will be increased by 10% of the Policy Amount shown in Schedule A, and

(2) You shall have the right to have the actual loss determined on either the date the claim was made by You or the date it is settled and paid.

c.

(1) If We remove the cause of the claim with reasonable diligence after receiving notice of it, all Our obligations for the claim end, including any obligation for loss You had while We were removing the cause of the claim.

(2) Regardless of 6.c.(1) above, if You cannot use the Land because of a claim covered by this Policy:

(a) You may rent a reasonably equivalent substitute residence and We will repay You for the actual rent You pay, until the earlier of:

(i) the cause of the claim is removed; or

(ii) We pay You the amount required by this Policy. If Your claim is covered only under Covered Risk 16, 18, 19 or 21, that payment is the amount of Your insurance then in force for the particular Covered Risk.

(b) We will pay reasonable costs You pay to relocate any personal property You have the right to remove from the Land, including transportation of that personal property for up to twenty-five (25) miles from the Land, and repair of any damage to that personal property because of the relocation. The amount We will pay You under this paragraph is limited to the value of the personal property before You relocate it.

d. All payments We make under this Policy reduce the Policy Amount then in force, except for costs, attorneys’ fees and expenses. All payments We make for claims which are covered only under Covered Risk 16, 18, 19 or 21 also reduce Our Maximum Dollar Limit of Liability for the particular Covered Risk, except for costs, attorneys’ fees and expenses.

e. If We issue, or have issued, a Policy to the owner of a Mortgage that is on Your Title and We have not given You any coverage against the Mortgage, then:

(1) We have the right to pay any amount due You under this Policy to the owner of the Mortgage, and any amount paid shall be treated as a payment to You under this Policy, including under Section 4.a. of these Conditions;

(2) Any amount paid to the owner of the Mortgage shall be subtracted from the Policy Amount then in force; and

(3) If Your claim is covered only under Covered Risk 16, 18, 19 or 21, any amount paid to the owner of the Mortgage shall also be subtracted from Our Maximum Dollar Limit of Liability for the particular Covered Risk.

f. If You do anything to affect any right of recovery You may have against someone else, We can subtract from Our liability the amount by which You reduced the value of that right.

**7. TRANSFER OF YOUR RIGHTS TO US**

a. When We settle Your claim, We have all the rights and remedies You have against any person or property related to the claim. You must not do anything to affect these rights and remedies. When We ask, You must execute documents to evidence the transfer to Us of these rights and remedies. You must let Us use Your name in enforcing these rights and remedies.

b. We will not be liable to You if We do not pursue these rights and remedies or if We do not recover any amount that might be recoverable.

c. We will pay any money We collect from enforcing these rights and remedies in the following order:

(1) to Us for the costs, attorneys’ fees and expenses We paid to enforce these rights and remedies;

(2) to You for Your loss that You have not already collected;

(3) to Us for any money We paid out under this Policy on account of Your claim; and

(4) to You whatever is left.

d. If You have rights and remedies under contracts (such as indemnities, guaranties, bonds or other policies of insurance) to recover all or part of Your loss, then We have all of those rights and remedies, even if those contracts provide that those obligated have all of Your rights and remedies under this Policy.

**8. THIS POLICY IS THE ENTIRE CONTRACT**

This Policy, with any endorsements, is the entire contract between You and Us. To determine the meaning of any part of this Policy, You must read the entire Policy and any endorsements. Any changes to this Policy must be agreed to in writing by Us. Any claim You make against Us must be made under this Policy and is subject to its terms.

**9. INCREASED POLICY AMOUNT**

The Policy Amount then in force will increase by ten percent (10%) of the Policy Amount shown in Schedule A each year for the first five years following the Policy Date shown in Schedule A, up to one hundred fifty percent (150%) of the Policy Amount shown in Schedule A. The increase each year will happen on the anniversary of the Policy Date shown in Schedule A.

**10. SEVERABILITY**

If any part of this Policy is held to be legally unenforceable, both You and We can still enforce the rest of this Policy.

**11. ARBITRATION**

a. If permitted in the state where the Land is located, You or We may demand arbitration.

b. The law used in the arbitration is the law of the state where the Land is located.

c. The arbitration shall be under the Title Insurance Arbitration Rules of the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (“Rules”). You can get a copy of the Rules from Us.

d. Except as provided in the Rules, You cannot join or consolidate Your claim or controversy with claims or controversies of other persons.

e. The arbitration shall be binding on both You and Us. The arbitration shall decide any matter in dispute between You and Us.

f. The arbitration award may be entered as a judgment in the proper court.

**12. CHOICE OF LAW**

The law of the state where the Land is located shall apply to this policy.

SCHEDULE A

Our name and address is: Blank Title Insurance Company

|  |  |
| --- | --- |
|  | (Company Name) |
|  | (Company Address) |

Policy No.: *[Premium: $*\_\_\_\_\_*]* Policy Amount: $ Policy Date *[and Time]*:

Deductible Amounts and Maximum Dollar Limits of Liability

For Covered Risk 16, 18, 19 and 21:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Your Deductible Amount | | Our Maximum Dollar Limit of Liability |
| Covered Risk 16: | % of Policy Amount Shown in Schedule A | | $ |
|  |  | or $ |  |
|  |  | (whichever is less) |  |
|  |  |  |  |
| Covered Risk 18: | % of Policy Amount Shown in Schedule A | | $ |
|  |  | or $ |  |
|  |  | (whichever is less) |  |
|  |  |  |  |
| Covered Risk 19: | % of Policy Amount Shown in Schedule A | | $ |
|  |  | or $ |  |
|  |  | (whichever is less) |  |
|  |  |  |  |
| Covered Risk 21: | % of Policy Amount Shown in Schedule A | | $ |
|  |  | or $ |  |
|  |  | (whichever is less) |  |

Street Address of the Land:

1. Name of Insured:

2. Your interest in the Land covered by this Policy is:

3. The Land referred to in this Policy is described as:

SCHEDULE B

EXCEPTIONS

In addition to the Exclusions, You are not insured against loss, costs, attorneys’ fees, and expenses resulting from:

Westlaw. © 2020 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

|  |  |
| --- | --- |
| **Footnotes** | |
| [\*](#co_fnRef_I84b64640d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan title insurance policy forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I84b64641d6ee11ea8f41e1f6f2aa78) | All publications of the American Land Title Association are copyrighted and are reprinted herein by specific permission from: American Land Title Association (ALTA) 1828 L Street, N.W., Suite 705, Washington DC 20036. 202-296-3671; E-Mail: service@alta.org; Web: http://www.alta.org. |

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| --- | --- |
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2 Title Ins. Law Appendix E1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84c95910d6ee11ea8f41e1f6f2a)**

APPENDIX E1. Short Form Expanded Coverage Residential Loan Policy[\*](#co_footnote_I84c95911d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Short Form Expanded Coverage Residential Loan Policy |
|  | Revised 01/01/08 |
|  | |

**SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY**

**ONE-TO-FOUR FAMILY**

Issued by

Blank Title Insurance Company

[**SCHEDULE A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))

|  |  |
| --- | --- |
| Name and Address of Title Insurance Company | |
|  |  |
| Policy Number: | Loan Number: |
| [File Number: ] |  |
| Amount of Insurance: $ | [Premium: $ ] |
|  |  |
| Mortgage Amount: | Mortgage Date: |
|  |  |
| Date of Policy: |  |
|  |  |
| Name of Insured: |  |
|  |  |
| Name of Borrower(s): |  |
|  |  |
| Street Address: |  |
| County and State: |  |

The estate or interest in the Land which is encumbered by the Insured Mortgage is fee simple and is, at Date of Policy, vested in the Borrower(s) shown in the Insured Mortgage and named above.

The Land referred to in this policy is described as set forth in the Insured Mortgage.

This policy consists of [one] page(s), [including the reverse side hereof,] unless an addendum is attached and indicated below:

\_\_\_ Addendum attached

[The following state statutes are made part of Schedule B, relating to the [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 8.1-06 Environmental Protection Lien Endorsement:\_\_\_\_\_]

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRESIDENT

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SECRETARY

*[bracketed material optional]*

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A \_\_\_\_\_ CORPORATION, HEREIN CALLED THE “COMPANY,” HEREBY INSURES IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (01-01-08), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.

**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

Except to the extent of the coverage provided in the Endorsements listed after COVERED RISK 28, this policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

1. Those taxes and special assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in Covered Risk 11(b) or 25.)

2. [**Covenants, conditions and restrictions**](http://practicallawconnect.thomsonreuters.com/Document/I7d5f2cdf3e7d11e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), if any, appearing in the Public Records. (This does not modify or limit the coverage provided in Covered Risk 9, 10, 11(c) or 17.)

3. Any easements or servitudes appearing in the Public Records. (This does not modify or limit the coverage provided in Covered Risk 23 or 24.)

4. Any lease, grant, exception or reservation of minerals or [**mineral rights**](http://practicallawconnect.thomsonreuters.com/Document/Id615fa0db8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) appearing in the Public Records. (This does not modify or limit the coverage provided in Covered Risk 18.)

NOTICES, WHERE SENT: All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ADDENDUM TO SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY

Addendum to Policy Number: \_\_\_\_\_ [File Number: \_\_\_\_\_]

**SCHEDULE B (Continued)**

IN ADDITION TO THE MATTERS SET FORTH ON SCHEDULE B OF THE POLICY TO WHICH THIS ADDENDUM IS ATTACHED, THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE BY REASON OF THE FOLLOWING:

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| **Footnotes** | |
| [\*](#co_fnRef_I84c95910d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I84c95911d6ee11ea8f41e1f6f2aa78) | All publications of the American Land Title Association are copyrighted and are reprinted herein by specific permission from: American Land Title Association (ALTA) 1828 L Street, N.W., Suite 705, Washington DC 20036. 202-296-3671; E-Mail: service@alta.org; Web: http://www.alta.org. |

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2 Title Ins. Law Appendix E2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84d9d3d0d6ee11ea8f41e1f6f2a)**

APPENDIX E2. Residential Limited Coverage Junior Loan Policy (August 1, 2012)[\*](#co_footnote_I84d9d3d1d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | ALTA Residential Limited Coverage |
|  | Junior Loan Policy |
|  | Revised 8-1-12 |
|  | |

RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY

Issued By

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 15 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS AND THE CONDITIONS, and provided that the Land is a one-to-four family residence or condominium unit, Blank Title Insurance Company, a \_\_\_\_\_ corporation, the Company, insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Grantee not being the named grantee on the last document purporting to vest the Title recorded in the Public Records.

2. The description of the Land in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) not being the same as that contained in the last document purporting to vest the Title recorded in the Public Records.

3. A Monetary Lien recorded in the Public Records.

4. Any ad valorem taxes or assessments of any governmental taxing authority that constitute a lien on the Title and that on Date of Policy appear in the official ad valorem tax records where the Land is located.

The Company will also pay the costs, attorneys’ fees and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRESIDENT

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SECRETARY

|  |  |
| --- | --- |
| Name and Address of Title Insurance Company: | |
| Policy No. | [Premium: $\_\_\_\_\_\_\_\_.] |
| Amount of Insurance: $ | Date of Policy: |
| Name of Insured: |  |
| Grantee: |  |

The Land referred to in this policy is described as follows:

EXCEPTIONS

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

[TAX INFORMATION]

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

1. Any invalidity, unenforceability or ineffectiveness of the Insured’s Mortgage.

2. Defects, liens, encumbrances, adverse claims or other matters:

a. created, suffered, assumed or agreed to by the Insured Claimant;

b. known to the Insured Claimant whether or not disclosed in the Public Records;

c. resulting in no loss or damage to the Insured Claimant; or

d. recorded or filed in the Public Records subsequent to Date of Policy.

**CONDITIONS**

1**.** DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) “Amount of Insurance”: The amount stated in Schedule A.

(b) “Date of Policy”: The date designated as “Date of Policy” in Schedule A.

(c) “Entity”: A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) “Grantee”: The Grantee designated in Schedule A.

(e) “Indebtedness”: The obligation if secured by the Insured’s Mortgage. Including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:

(i) the amount of the principal disbursed if secured by the Insured’s Mortgage;

(ii) interest on the loan;

(iii) the [**prepayment premiums**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e9a1ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), exit fees, and other similar fees or penalties allowed by law;

(iv) the expenses of foreclosure and any other costs of enforcement;

but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(f) “Insured”: The Insured named in Schedule A if it is the owner of the Indebtedness and each successor in ownership of the Indebtedness, except a successor who is an obligor, reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(g) “Insured Claimant”: An Insured claiming loss or damage.

(h) “Insured’s Mortgage”: The Mortgage described in JR1.

(i) “Knowledge” or “Known”: Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting the Title.

(j) “Land”: The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways.

(k) “Mortgage”: Mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(l) “Monetary Lien”: Any Mortgage, deed of trust, judgment lien or other lien affecting the Title securing the obligation to pay money, but not including any lien created in any easement, covenant, condition, restriction, or declaration of condominium or [**planned unit development**](http://practicallawconnect.thomsonreuters.com/Document/Ide70b10406f611eaadfea82903531a62/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), except to the extent that a separate notice of enforcement of a specific delinquent charge or assessment affecting the Title has been recorded in the Public Records.

(m) “Public Records”: Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(n) “Title”: The estate or interest described in Schedule A.

2**.** CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured through foreclosure of the lien of the Insured’s Mortgage or deed in lieu of foreclosure.

3**.** NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5 of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company’s liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4**.** PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5**.** DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 6 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 6 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6**.** OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys’ fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company’s obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

7**.** DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness, or

(iii) the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy.

(b) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions then the extent of liability of the Company shall continue as set forth in Section 7(a) of these Conditions.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys’ fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions. If the loss is caused by a lien insured against by this policy, the difference between the value of the estate or interest in the land encumbered by the insured’s mortgage without the lien insured against and the value of that estate or interest subject to the lien insured against by this policy.

8**.** LIMITATION OF LIABILITY

(a) If the Company removes an alleged matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations and shall not be liable for any loss or damage with respect to that matter.

(b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Insured with respect to matters insured against by this policy.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

9**.** REDUCTION OF INSURANCE; TERMINATION OF LIABILITY

(a) All payments under this policy, except payment made for costs, attorneys’ fees and expenses, shall reduce the Amount of Insurance by the amount of the payment.

(b) The voluntary satisfaction or release of the Insured’s Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

10**.** PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

11**.** RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company’s Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to all rights and remedies of the Insured Claimant in respect to the claim that the Insured Claimant has against any person or property to the extent of the amount of any loss, costs, attorneys’ fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company’s Rights Against Noninsured Obligors

The Company’s right of subrogation includes the Insured’s rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company’s right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

12**.** LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage relating to the Covered Risks or any other matter shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

13**.** SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, and all other provisions shall remain in full force and effect.

14**.** CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims insured against by this policy and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15**.** NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at [fill in], Attention: Claims Department.

[16**.** ARBITRATION

Unless prohibited by applicable law, either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (“Rules”). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.]

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| **Footnotes** | |
| [\*](#co_fnRef_I84d9d3d0d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I84d9d3d1d6ee11ea8f41e1f6f2aa78) | Reprinted with permission from the American Land Title Association (ALTA). ALTA reserves all rights. The forms can be found online at: http://www.alta.org/forms/. |

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2 Title Ins. Law Appendix E3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84e98b40d6ee11ea8f41e1f6f2a)**

APPENDIX E3. Short Form Residential Loan Policy (June 16 2007)[\*](#co_footnote_I84eb38f0d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Short Form Residential Loan Policy |
|  | Revised 6/16/07 |
|  | |

**SHORT FORM RESIDENTIAL LOAN POLICY**

**ONE-TO-FOUR FAMILY**

Issued by

*Blank Title Insurance Company*

[**SCHEDULE A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))

Name and Address of Title Insurance Company:

[File No.:]

Policy No.:

Loan No.:

Address Reference:

Street Address:

County and State:

Amount of Insurance: $

*[Premium: $]*

Mortgage Amount: $

Mortgage Date:

Date of Policy: *[at a.m./p.m.]*

Name of Insured:

Name of Borrower(s):

The estate or interest in the Land identified in this Schedule A and which is encumbered by the Insured Mortgage is fee simple and is, at Date of Policy, vested in the borrower(s) shown in the Insured Mortgage and named above.

The Land referred to in this policy is described as set forth in the Insured Mortgage.

This policy consists of [one] page(s), [including its reverse side,] unless an addendum is attached and indicated below:

\_\_\_ Addendum attached

[Subject to the conditions stated in the endorsement list below, the following [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) endorsements are incorporated in this policy:

ALTA ENDORSEMENT 4.1-06 (Condominium), if the Land or estate or interest is referred to in the Insured Mortgage as a condominium.

ALTA ENDORSEMENT 5.1-06 ([**Planned Unit Development**](http://practicallawconnect.thomsonreuters.com/Document/Ide70b10406f611eaadfea82903531a62/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)))

ALTA ENDORSEMENT 6-06 (Variable Rate), if the Insured Mortgage contains provisions which provide for an adjustable interest rate.

ALTA ENDORSEMENT 6.2-06 (Variable Rate-Negative Amortization), if the Insured Mortgage contains provisions which provide for both an adjustable interest rate and [**negative amortization**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0b91ef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

ALTA ENDORSEMENT 8.1-06 (Environmental Protection Lien) — Paragraph b refers to the following state statute(s):

[The endorsements checked below, if any, are incorporated in this policy:

□ ALTA ENDORSEMENT 4-06 (Condominium)

□ ALTA ENDORSEMENT 5-06 (Planned Unit Development)

□ ALTA ENDORSEMENT 7-06 (Manufactured Housing)

□ ALTA ENDORSEMENT 7.1-06 (Manufactured Housing — Conversion; Loan)

□ ALTA ENDORSEMENT 9-06 (Restrictions, Encroachments, Minerals)

□ ALTA ENDORSEMENT 14-06 (Future Advance — Priority)

□ ALTA ENDORSEMENT 14.1-06 (Future Advance — Knowledge)

□ ALTA ENDORSEMENT 14.3-06 (Future Advance — [**Reverse Mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If780808ebf9a11e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)))

□ ALTA ENDORSEMENT 22-06 (Location) The type of improvement is a one-to-four family residential structure and the street address is as shown above.]

[The endorsements checked below, if any, are incorporated in this policy:

□ ALTA ENDORSEMENT 4-06 (Condominium)

□ ALTA ENDORSEMENT 4.1-06 (Condominium), if the Land or estate or interest is referred to in the Insured Mortgage as a condominium.

□ ALTA ENDORSEMENT 5-06 (Planned Unit Development)

□ ALTA ENDORSEMENT 5.1-06 (Planned Unit Development)

□ ALTA ENDORSEMENT 6-06 (Variable Rate), if the Insured Mortgage contains provisions which provide for an adjustable interest rate.

□ ALTA ENDORSEMENT 6.2-06 (Variable Rate-Negative Amortization), if the Insured Mortgage contains provisions which provide for both an adjustable interest rate and negative amortization.

□ ALTA ENDORSEMENT 7-06 (Manufactured Housing), if a manufactured housing unit is located on the Land at Date of Policy.

□ ALTA ENDORSEMENT 7.1-06 (Manufactured Housing — Conversion; Loan)

□ ALTA ENDORSEMENT 8.1-06 (Environmental Protection Lien) — Paragraph b refers to the following state statute(s):

□ ALTA ENDORSEMENT 9-06 (Restrictions, Encroachments, Minerals)

□ ALTA ENDORSEMENT 14-06 (Future Advance — Priority)

□ ALTA ENDORSEMENT 14.1-06 (Future Advance — Knowledge)

□ ALTA ENDORSEMENT 14.3-06 (Future Advance — Reverse Mortgage)

□ ALTA ENDORSEMENT 22-06 (Location) The type of improvement is a one-to-four family residential structure and the street address is as shown above.]

*[Witness clause optional]*

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRESIDENT

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SECRETARY

*[bracketed material optional—one alternative must be chosen]*

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A \_\_\_\_\_ CORPORATION, HEREIN CALLED THE “COMPANY,” HEREBY INSURES THE INSURED IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (6-17-06), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.

SCHEDULE B

EXCEPTIONS FROM COVERAGE AND

AFFIRMATIVE INSURANCES

Except to the extent of the affirmative insurance set forth below, this policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) which arise by reason of:

1. Those taxes and special assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in Covered Risk 11(b).)

2. Covenants, conditions, or restrictions, if any, appearing in the Public Records; however, this policy insures against loss or damage arising from:

(a) the violation of those covenants, conditions, or restrictions on or prior to Date of Policy;

(b) a forfeiture or reversion of Title from a future violation of those covenants, conditions, or restrictions, including those relating to environmental protection; and

(c) provisions in those covenants, conditions, or restrictions, including those relating to environmental protection, under which the lien of the Insured Mortgage can be extinguished, subordinated, or impaired.

As used in paragraph 2(a), the words “covenants, conditions, or restrictions” do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not referenced in an addendum attached to this policy.

3. Any easements or servitudes appearing in the Public Records; however, this policy insures against loss or damage arising from (a) the encroachment, at Date of Policy, of the improvements on any easement, and (b) any interference with or damage to existing improvements, including lawns, shrubbery, and trees, resulting from the use of the easements for the purposes granted or reserved.

4. Any lease, grant, exception, or reservation of minerals or [**mineral rights**](http://practicallawconnect.thomsonreuters.com/Document/Id615fa0db8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) appearing in the Public Records; however, this policy insures against loss or damage arising from (a) any affect on or impairment of the use of the Land for residential one-to-four family dwelling purposes by reason of such lease, grant, exception or reservation of minerals or mineral rights, and (b) any damage to existing improvements, including lawns, shrubbery, and trees, resulting from the future exercise of any right to use the surface of the Land for the extraction or development of the minerals or mineral rights so leased, granted, excepted, or reserved. Nothing herein shall insure against loss or damage resulting from subsidence.

NOTICES, WHERE SENT: Any notice of claim or other notice or statement in writing required to be given the Company under this policy must be given to the Company at the following address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

ADDENDUM

TO

SHORT FORM RESIDENTIAL LOAN POLICY

Addendum to Policy Number: \_\_\_\_\_ *[File Number:* \_\_\_\_\_*]*

SCHEDULE B (Continued)

IN ADDITION TO THE MATTERS SET FORTH ON SCHEDULE B OF THE POLICY TO WHICH THIS ADDENDUM IS ATTACHED, THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEYS’ FEES OR EXPENSES) THAT ARISE BY REASON OF THE FOLLOWING:

NOTICES, WHERE SENT: Any notice of claim or other notice or statement in writing required to be given the Company under this policy must be given to the Company at the following address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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| --- | --- |
| **Footnotes** | |
| [\*](#co_fnRef_I84e98b40d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix E4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I84f12c60d6ee11ea8f41e1f6f2a)**

APPENDIX E4. ALTA Short Form Residential Limited Coverage Junior Loan Policy (April 4, 2013)[\*](#co_footnote_I84f28bf0d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | ALTA Short Form Residential Limited Coverage |
|  | Junior Loan Policy |
|  | Revised 04-02-2013 |
|  | |

SHORT FORM RESIDENTIAL LIMITED COVERAGE

JUNIOR LOAN POLICY

Issued By

BLANK TITLE INSURANCE COMPANY

Subject to the Exceptions below and in any Addendum attached, BLANK TITLE INSURANCE COMPANY, a \_\_\_\_\_\_\_\_\_\_\_ Corporation, (the “Company,”) insures the Insured as of Date of Policy against loss or damage, not exceeding the Amount of Insurance, as provided by and subject to the terms, Exclusions from Coverage and Conditions set forth in the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Residential Limited Coverage Junior Loan Policy (8-1-12), all of which are incorporated by reference.

|  |  |
| --- | --- |
| Name and Address of Title Insurance Company: | |
| Policy No. | [Premium: $\_\_\_\_\_\_\_\_.] |
| Amount of Insurance: $ | Date of Policy: [at a.m./p.m.] |
| Name of Insured: |  |
| Grantee: |  |
|  |  |
| The Land referred to in this policy is described as follows: | |

EXCEPTIONS:

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

[TAX INFORMATION:]

\_\_\_ Addendum containing additional exceptions attached.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRESIDENT

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SECRETARY

NOTICES WHERE SENT. All notices required to be given the Company and any statement in writing required to be furnished to the Company shall include the number of this policy and shall be addressed to the Company, Attention: Claims Department, \_\_\_\_\_\_\_\_\_\_\_.

ADDENDUM TO SHORT FORM RESIDENTIAL

LIMITED COVERAGE JUNIOR LOAN POLICY

|  |  |
| --- | --- |
| File No: | Addendum to Policy No. |

EXCEPTIONS (CONTINUED)

In addition to the matters set forth as Exceptions on the Short Form Residential Limited Coverage Loan Policy to which this addendum is attached, this policy does not insure against loss or damage by reason of the following:

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|  |  |
| --- | --- |
| **Footnotes** | |
| [\*](#co_fnRef_I84f12c60d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix F (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85032dc0d6ee11ea8f41e1f6f2a)**

APPENDIX F. ALTA Limited Pre-Foreclosure Policy[\*](#co_footnote_I85032dc1d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Limited Pre-Foreclosure Policy |
|  | Adopted 12-03-12 |
|  | |

LIMITED PRE-FORECLOSURE POLICY

Issued By

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 15 of the Conditions.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured and is not an [**abstract of title**](http://practicallawconnect.thomsonreuters.com/Document/Ieaf7162d641111e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or a report of a condition of title.

[This policy is effective only if the Land is improved by a one-to-four family residence and related structures.]

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the “Company”), insures as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of any of the following matters, if not identified in Schedule B:

1. An instrument purporting to change or evidencing a change in the ownership of the Title and recorded in the Public Records subsequent to the recording of the Insured’s Mortgage.

2. An instrument purporting to create a right or interest affecting the Title and recorded in the Public Records subsequent to the recording of the Insured’s Mortgage.

3. A Mortgage, notice of Mechanic’s Lien, Judgment Lien, federal tax lien, or other lien affecting the Title and recorded in the Public Records subsequent to the recording of the Insured’s Mortgage.

4. A Judgment Lien or federal tax lien affecting the Title and recorded in the Public Records against the names of the mortgagors of the Insured’s Mortgage prior to the recording of the Insured’s Mortgage.

5. A Notice of a Judicial Proceeding affecting the Title and recorded in the Public Records subsequent to the recording of the Insured’s Mortgage.

6. A Notice of Bankruptcy specified in [11 U.S.C. Section 549 (c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=11USCAS549&originatingDoc=If4f623aa6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), affecting the Title and recorded in the Public Records subsequent to the recording of the Insured’s Mortgage.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records subsequent to the recording of the Insured’s Mortgage.

8. Ad valorem real estate taxes and assessments imposed by a governmental authority due and payable at Date of Policy.

BLANK TITLE INSURANCE COMPANY

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys’ fees, or expenses that arise by reason of:

1.

(a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:

(i) the occupancy, use, or enjoyment of the Land;

(ii) the character, dimensions, or location of any improvement erected on the Land;

(iii) the subdivision of land; or

(iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations.

(b) Any governmental police power.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7.

3. Defects, liens, encumbrances, adverse claims, transfers of the Title, or other matters:

(a) created, suffered, assumed, or agreed to by the Insured;

(b) Known to the Insured whether or not disclosed in the Public Records;

(c) resulting in no loss or damage to the Insured;

(d) attaching or created subsequent to Date of Policy;

(e) not recorded in the Public Records at Date of Policy; or

(f) resulting in loss or damage that would not have been sustained if the Insured had paid value for the Insured’s Mortgage.

4. Invalidity, unenforceability, or lack of priority of the Insured’s Mortgage, or any assignment of it.

5. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws. This Exclusion does not modify or limit the coverage provided under Covered Risk 6.

6. Any claim that Title to the Land is an [**Unmarketable Title**](http://practicallawconnect.thomsonreuters.com/Document/I8619d546135411e798dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

CONDITIONS

1**.** DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) “Amount of Insurance”: The amount stated in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) as it may be decreased by Section 9 of these Conditions.

(b) “Curative Action”: An act, payment or proceeding to eliminate a matter included within the Covered Risks but not excluded by the Exclusions from Coverage or identified in Schedule B.

(c) “Date of Policy”: The date designated as “Date of Policy” in Schedule A.

(d) “Indebtedness”: The obligation secured by the Insured’s Mortgage including one evidenced by electronic means authorized by law and, if that obligation is the payment of a debt, the Indebtedness is the sum of:

(i) the amount of the principal disbursed as of Date of Policy;

(ii) interest on the loan;

(iii) the expenses of foreclosure and any other costs of enforcement;

(iv) the amounts to pay taxes and insurance; and

(v) the reasonable amounts expended to prevent deterioration of improvements;

but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) “Insured’s Mortgage”: The Mortgage described in paragraph 3 of Schedule A.

(f) “Insured”: The Insured named in Schedule A.

(g) “Judgment Lien”: A judgment, abstract of judgment, tax lien (other than a lien for ad valorem real estate taxes or assessments), or support lien recorded in the Public Records, and having the effect of a judgment for the payment of money.

(h) “Knowledge” or “Known”: Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting the Title.

(i) “Land”: The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways.

(j) “Mechanic’s Lien”: A private, [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or claim of lien, affecting the Title that arises from services provided, labor performed, or materials or equipment furnished for the construction of an improvement or work on the Land.

(k) “Mortgage”: Mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(l) “Notice of Bankruptcy”: A document specified in [11 U.S.C. Section 549 (c)](http://practicallawconnect.thomsonreuters.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=11USCAS549&originatingDoc=If4f623aa6fac11d98776f22b20adbd85&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)) setting forth the nature and venue of and debtor in a bankruptcy proceeding.

(m) “Notice of a Judicial Proceeding”: A notice of *lis pendens* or other document required or permitted under state statutes to provide constructive notice of a judicial proceeding affecting the Title and setting forth the nature and venue of and parties to the proceeding and describing any part of the Land.

(n) “Public Records”: Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(o) “Title”: The estate or interest described in Schedule A.

(p) “Unmarketable Title”: Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured’s Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

2**.** NOTICE OF CLAIM TO BE GIVEN BY INSURED

The Insured shall notify the Company promptly in writing in case Knowledge shall come to the Insured of a matter that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured to provide prompt notice, the Company’s liability to the Insured under the policy shall be reduced to the extent of the prejudice.

3**.** NO DUTY TO DEFEND OR PROSECUTE

The Company shall have no duty to defend or prosecute any action or proceeding to which the Insured is a party, notwithstanding the nature of any allegation in such action or proceeding. However, the Company has the rights listed in Section 4 of these Conditions.

4**.** COMPANY’S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF INSURED TO COOPERATE

(a) In addition to the options contained in Section 6 of these Conditions and whether or not the Company shall be liable to the Insured, the Company shall have the right, but not the obligation, at its own cost, to undertake any Curative Action that in its opinion may prevent or reduce loss or damage to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(b) If the Company brings an action or asserts a defense permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

(c) In all cases where this policy permits the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at the Company’s option, the name of the Insured for this purpose.

(d) If requested by the Company, the Insured, at the Company’s expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that, in the opinion of the Company, may be necessary or desirable to avoid or mitigate a loss under this policy. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company’s obligations to the Insured under the policy shall terminate, with regard to the matter or matters requiring such cooperation.

5**.** PROOF OF LOSS OR DAMAGE

(a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured furnish a signed proof of loss. The proof of loss must describe the matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

(b) The Company may reasonably require the Insured to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6**.** OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy. In addition, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys’ fees, and expenses authorized by the Company and incurred by the Insured; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase. When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured’s Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than to make the payments required in those subsections, shall terminate.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured.

(i) To pay or otherwise settle with other parties for or in the name of an Insured any claim insured against under this policy. In addition, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys’ fees, and expenses authorized by the Company and incurred by the Insured; or

(ii) To pay or otherwise settle with the Insured the loss or damage provided for under this policy. In addition, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys’ fees, and expenses authorized by the Company and incurred by the Insured.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than the payments required in those subsections, shall terminate.

7**.** DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured who has suffered loss or damage by reason of matters insured against by this policy.

The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:

(a) the Amount of Insurance;

(b) the Indebtedness;

(c) costs, attorneys’ fees, and expenses incurred or authorized in writing by the Company in completing any Curative Action; or

(d) the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy.

8**.** LIMITATION OF LIABILITY

(a) If the Company cures any matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals.

(c) The Company shall have no liability for loss or damage to the Insured, resulting from any delay in the enforcement of the Insured Mortgage, including lost interest, reduction in the value of the security or collateral, taxes, assessments, insurance or maintenance.

(d) The Company shall not be liable for loss or damage to, or attorneys’ fees, expenses or liability incurred by, the Insured in conducting a Curative Action or settling any claim or suit without the prior written consent of the Company.

9**.** REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys’ fees, and expenses under Section 4 of these Conditions, shall reduce the Amount of Insurance by the amount of the payments.

(b) The voluntary satisfaction or release of the Insured’s Mortgage, other than foreclosure of the Insured’s Mortgage or the acceptance of delivery of a deed of lieu of foreclosure of the Insured’s Mortgage, shall terminate all liability of the Company.

10**.** PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

11**.** RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company’s Right to Recover.

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured in the Title or Insured’s Mortgage and to all other rights and remedies in respect to the claim that the Insured has against any person or property, to the extent of the amount of any loss, costs, attorneys’ fees, and expenses paid by the Company. If requested by the Company, the Insured shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured shall permit the Company to sue, compromise, or settle in the name of the Insured and to use the name of the Insured in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured, the Company shall defer the exercise of its right to recover until after the Insured shall have recovered its loss.

(b) The Company’s Rights Against Noninsured Obligors.

The Company’s right of subrogation includes the Insured’s rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company’s right of subrogation shall not be avoided by acquisition of the Insured’s Mortgage by an obligor who acquires the Insured’s Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

12**.** LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of a matter insured against by this policy or by any action asserting such matter shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it shall not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

13**.** SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14**.** CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

The law of the jurisdiction where the Land is located shall apply to determine the validity of matters insured against under this policy and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15**.** NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

[16**.** ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (“Rules”). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters, when the Amount of Insurance is $\_\_\_\_\_\_\_\_ or less, shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters, when the Amount of Insurance is in excess of $\_\_\_\_\_\_\_\_, shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.]

NOTE: Bracketed [ ] material optional

Schedule A

Name and Address of Title Insurance Company:

[File No.: \_\_\_\_\_] Policy No.: \_\_\_\_\_

[Address Reference: \_\_\_\_\_]

Amount of Insurance: $\_\_\_\_\_\_\_\_ [Premium: $\_\_\_\_\_\_\_\_]

Date of Policy: \_\_\_\_\_ [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is the subject of coverage in this policy is:

3. The Insured’s Mortgage is described as follows:

4. The Land referred to in this policy is described as follows:

Schedule B

This policy does not insure against loss or damage by reason of:

(List matters identified in accordance with the Covered Risks.)

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| --- | --- |
| **Footnotes** | |
| [\*](#co_fnRef_I85032dc0d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I85032dc1d6ee11ea8f41e1f6f2aa78) | Reprinted with permission from the American Land Title Association (ALTA). ALTA reserves all rights. The forms can be found online at: http://www.alta.org/forms/. |

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2 Title Ins. Law Appendix F1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I850b4410d6ee11ea8f41e1f6f2a)**

APPENDIX F1. Limited Pre-Foreclosure Date-Down Endorsement[\*](#co_footnote_I850b4411d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Limited Pre-Foreclosure Date-Down Endorsement |
|  | Adopted 12-03-12 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Date of Policy is changed to: \_\_\_\_\_

2. [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is also amended as follows:

3. Schedule B is amended to add the following matters:

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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| --- | --- |
| **Footnotes** | |
| [\*](#co_fnRef_I850b4410d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
| [\*](#co_fnRef_I850b4411d6ee11ea8f41e1f6f2aa78) | Reprinted with permission from the American Land Title Association (ALTA). ALTA reserves all rights. The forms can be found online at: http://www.alta.org/forms/. |

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2 Title Ins. Law Appendix G (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85211600d6ee11ea8f41e1f6f2a)**

APPENDIX G. ALTA Construction Loan Policy[\*](#co_footnote_I85211601d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Construction Loan Policy |
|  | Revised 10/17/92 |
|  | Section II-5 |
|  | |

**POLICY OF TITLE INSURANCE**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

2. Any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title;

3. Unmarketability of the title;

4. Lack of a right of access to and from the land;

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;

6. The priority of any lien or encumbrance over the lien of the insured mortgage;

7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys’ fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRESIDENT

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SECRETARY

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

1.

(a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy; or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any lien or right to a lien imposed by law for services, labor or material, heretofore or hereafter furnished, except for any lien the assertion of which by a claimant is recorded in the public records at Date of Policy.

7. Any lack of priority of the lien of the insured mortgage over any lien or encumbrance because, and to the extent that, the proceeds of the loan secured thereby may not have been fully disbursed at Date of Policy.

8. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that is based on:

(a) the transaction creating the interest of the insured mortgagee being deemed a [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or fraudulent transfer; or

(b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of [**equitable subordination**](http://practicallawconnect.thomsonreuters.com/Document/I21050581ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); or

(c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:

(i) to timely record the instrument of transfer; or

(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**SCHEDULE A**

**[File No. ] Policy No.**

**Amount of Insurance $**

**[Premium $ ]**

**a.m.**

Date of Policy \_\_\_\_\_ [at p.m.]

1. Name of Insured:

2. The estate or interest in the land which is encumbered by the insured mortgage is:

3. Title to the estate or interest in the land is vested in:

4. The insured mortgage and assignments thereof, if any, are described as follows:

[5. The land referred to in this policy is described as follows:]

If Paragraph 5 is omitted, a Schedule C, captioned the same as Paragraph 5, must be used.

**SCHEDULE B**

**[File No. ] Policy No.**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

**PART I**

[POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO DESIRED BY ISSUING COMPANY]

[VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Ra, ETC.]

Note: If there are matters which affect the title to the estate or interest in the land described in Schedule [A][C], but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Part I of Schedule B must contain the following statement:

Matters which affect the title to the estate or interest, but which are subordinate to the lien of the insured mortgage

**PART II**

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule [A][C] is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

**CONDITIONS AND STIPULATIONS**

**1. DEFINITION OF TERMS.**

The following terms when used in this policy mean:

(a) “insured”: the insured named in Schedule A. The term “insured” also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) “insured claimant”: an insured claiming loss or damage.

(c) “knowledge” or “known”: actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters affecting the land.

(d) “land”: the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term “land” does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) “mortgage”: mortgage, [**deed of trust**](http://practicallawconnect.thomsonreuters.com/Document/I686eb6893db811e498db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), trust deed, or other security instrument.

(f) “public records”: records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, “public records” shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) “unmarketability of the title”: an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of [**marketable title**](http://practicallawconnect.thomsonreuters.com/Document/I6bfecdd6f0be11e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

**2. CONTINUATION OF INSURANCE.**

(a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee’s sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee in the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a [**purchase money mortgage**](http://practicallawconnect.thomsonreuters.com/Document/If98a85561c9011e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) the Amount of Insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.**

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

**4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any ac tion or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company’s expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or affecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

**5. PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company’s obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys’ fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys’ fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company’s obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**7. DETERMINATION AND EXTENT OF LIABILITY.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the proceeds of the loan secured by the insured mortgage disbursed at Date of Policy plus the amount of each succeeding disbursement made in accordance with the terms of the insured mortgage until the aggregate of all disbursements is equal to the Amount of Insurance stated in Schedule A, plus any amount advanced to protect the lien of the insured mortgage and secured thereby, plus interest on those amounts, as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys’ fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

**12. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

(a) The Company’s Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured’s Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company’s right of subrogation.

(c) The Company’s Rights Against Non-insured Obligors.

The Company’s right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company’s right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

**13. ARBITRATION.**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys’ fees only if the laws of the state in which the land is located permit a court to award attorneys’ fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**15. SEVERABILITY.**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**16. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [ ] material optional

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| **Footnotes** | |
| [\*](#co_fnRef_I85211600d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix G1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I852ab2f0d6ee11ea8f41e1f6f2a)**

APPENDIX G1. ALTA Construction Loan Endorsements A, B, C & D (June 1, 1987)[\*](#co_footnote_I852beb70d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Construction Loan Policy |
|  | Endorsement A thru D |
|  | Revised 6/1/87 |
|  | |

**ENDORSEMENT A**

**Attached to Policy No.**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) for services, labor or material, for that portion of the cost thereof the payment for which the insured has advanced funds, and which services, labor or material were furnished prior to \_\_\_\_\_ for an improvement or work related to the land.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraphs 3(d), 6 and 7 of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ENDORSEMENT B**

**Attached to Policy No.**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material heretofore or hereafter furnished for that portion of the proceeds of the loan secured by the insured mortgage now or hereafter advanced in compliance with a legal obligation to advance contained in a written agreement which must exist at the date of this endorsement.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraphs 3(d), 6 and 7 of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Witness clause optional]

**ENDORSEMENT C**

**Attached to Policy No.**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material heretofore or hereafter furnished for that portion of the proceeds of the loan secured by the insured mortgage now or hereafter advanced prior to the filing of any assertion of a statutory lien or right thereto in the public records or thereafter advanced with the written consent of the Company.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraphs 3(d), 6 and 7 of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ENDORSEMENT D**

**Attached to Policy No.**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material heretofore or hereafter furnished.

This endorsement does not insure against loss or damage by reason of failure by the insured to comply with or to enforce the provisions of any agreement to which the insured is a party which relate to advancing the proceeds of the loan secured by the insured mortgage.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraphs 3(d), 6 and 7 of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| [\*](#co_fnRef_I852ab2f0d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix G2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I853401c0d6ee11ea8f41e1f6f2a)**

APPENDIX G2. ALTA Endorsement 32-06 Construction Loan—Loss of Priority[\*](#co_footnote_I853401c1d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 32-06 |
|  | Construction Loan—Loss of Priority |
|  | Adopted 2-3-11 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.

2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. “Date of Coverage”, is [\_\_\_\_\_\_\_\_\_\_\_] *[Date of Policy]* unless the Company sets a different Date of Coverage by an [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 33-06 Disbursement Endorsement issued at the discretion of the Company.

b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

c. “Mechanic’s Lien,” shall mean any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic’s Lien, if notice of the Mechanic’s Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic’s Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) by reason of any Mechanic’s Lien arising from services, labor, material or equipment:

a. furnished after Date of Coverage; or

b. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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2 Title Ins. Law Appendix G3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I853e6200d6ee11ea8f41e1f6f2a)**

APPENDIX G3. ALTA Endorsement 32.1-06 Construction Loan—Loss of Priority—Direct Payment (April 2, 2013)[\*](#co_footnote_I853f9a80d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 32.1-06 |
|  | Construction Loan—Loss of Priority—Direct Payment |
|  | Revised 04-02-13 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.

2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. “Date of Coverage”, is [\_\_\_\_\_\_\_\_\_\_\_] *[Date of Policy]* unless the Company sets a different Date of Coverage by an [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 33-06 Disbursement Endorsement issued at the discretion of the Company.

b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

c. “Mechanic’s Lien,” shall mean any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic’s Lien if notice of the Mechanic’s Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic’s Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic’s Lien is claimed has been made by the Company or by the Insured with the Company’s written approval.

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) by reason of any Mechanic’s Lien arising from services, labor, material or equipment:

a. furnished after Date of Coverage; or

b. to the extent that the Mechanic’s Lien claimant was not directly paid by the Company or by the Insured with the Company’s written approval.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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2 Title Ins. Law Appendix G4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8546c670d6ee11ea8f41e1f6f2a)**

APPENDIX G4. ALTA Endorsement 32.2-06 Construction Loan—Loss of Priority—Insured’s Direct Payment (April 2, 2014)[\*](#co_footnote_I8546c671d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 32.2-06 |
|  | Construction Loan—Loss of Priority—Insured’s Direct Payment |
|  | Revised 04-02-13 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.

2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. “Date of Coverage,” is [\_\_\_\_\_\_\_\_\_\_\_] *[Date of Policy]* unless the Company sets a different Date of Coverage by an [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 33-06 Disbursement Endorsement issued at the discretion of the Company.

b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

c. “Mechanic’s Lien,” shall mean any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic’s Lien, if notice of the Mechanic’s Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic’s Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic’s Lien is claimed has been made by the Insured or on the Insured’s behalf on or before Date of Coverage.

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) by reason of any Mechanic’s Lien arising from services, labor, materials or equipment:

a. Furnished after Date of Coverage; or

b. To the extent that the Mechanic’s Lien claimant was not directly paid by the Insured or on the Insured’s behalf.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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| **Footnotes** | |
| [\*](#co_fnRef_I8546c670d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix G5 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I854c1da0d6ee11ea8f41e1f6f2a)**

APPENDIX G5. ALTA Endorsement 33-06 Disbursement[\*](#co_footnote_I854c1da1d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 33-06 (Disbursement) |
|  | Adopted 2-3-11 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Date of Coverage is amended to \_\_\_\_\_.

[a. The current disbursement is: $\_\_\_\_\_\_\_\_]

[b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: $\_\_\_\_\_\_\_\_]

2. [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is amended as follows:

3. Schedule B is amended as follows:

[Part I]

[Part II]

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_

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|  |  |
| --- | --- |
| **Footnotes** | |
| [\*](#co_fnRef_I854c1da0d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix H (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85578f50d6ee11ea8f41e1f6f2a)**

APPENDIX H. ALTA Recorded Document Guarantee (October 3, 1990)[\*](#co_footnote_I85578f51d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Recorded Document Guarantee |
|  | Adopted 10/3/90 |
|  | |

**APPLICATION FOR THE ISSUANCE OF A RECORDED DOCUMENT GUARANTEE**

Applicant, for the purpose of purchase, sale, lease or loan, is in the process of investigating the prior ownerships and uses of the Subject Property. As only a component of that investigation. Applicant hereby requests the Company to furnish Applicant with a Recorded Document Guarantee, which Guarantee will set forth and attach copies of the Designated Documents. The Guarantee is being provided to Applicant solely for the purpose of facilitating any innocent landowner or purchaser defenses which may be available under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. It is provided for the sole use and benefit of Applicant and may not be used or relied upon by any other party.

1. The following terms when used in the Application and the Recorded Document Guarantee shall mean:

a. Applicant - The party or parties which have executed this Application and which are shown as the Assured in the Guarantee.

b. [**CERCLA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec61a2ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) - Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

c. Company - *Blank Title Insurance Company*

d. Designated Documents - Those documents specifically designated by Applicant in paragraphs 3a or 3b and in paragraph 4 and which describe the Subject Property or any portion thereof and which are not Excluded Documents.

e. Excluded Documents - Any of the following:

(i) documents indexed in the Company’s title plant records by name only,

(ii) documents pertaining to an estate or interest in minerals, gas and oil, or other hydrocarbon substances,

(iii) documents pertaining to water rights, claims or title to water, or

(iv) documents recorded or indexed outside the [**chain of title**](http://practicallawconnect.thomsonreuters.com/Document/I2e45ae37642211e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), whether or not the documents impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to purchasers of the Subject Property for value and without knowledge.

f. Guarantee - Recorded Document Guarantee.

g. Land Records - Those records in which under state statutes the Designated Documents must be recorded in order to impart constructive notice to purchasers of the Subject Property for value and without knowledge.

h. Subject Property - The real property described in the Application, but not including any severed mineral estate.

2. The Subject Property is described as follows:

3. Applicant hereby requests the Company to issue the Guarantee identifying only the following Designated Documents which are:

a. \_\_\_ currently posted in the Company’s title plant and which were recorded in the Land Records from (Date) through (Date).

b. \_\_\_ recorded and indexed in the grantor-grantee indices in the Land Records of (Name of County) (State) from (Date) through (Date).

[\_\_\_ Other:]

4. Designated Documents as defined in paragraph 1(d) above:

a. \_\_\_ Deeds

b. \_\_\_ Lessee and Sublessee

c. \_\_\_ Mortgages/Deeds of Trust

d. \_\_\_ Environmental Protection Liens recorded pursuant to CERCLA

e. \_\_\_ All documents

5. Applicant specifically instructs the Company to disclose in the Guarantee only the Designated Documents indicated above. Applicant understands that during the course of searching the records covered by the Guarantee the Company may find or have knowledge of documents of a type other than the Designated Documents requested by Applicant. Even if the Company knows or would have reason to know Applicant may have an interest in these other documents, Applicant imposes no duty or responsibility on the Company to disclose those documents or their content to Applicant either through the Guarantee or otherwise.

6. BY THE EXECUTION AND SUBMISSION OF THIS APPLICATION TO THE COMPANY, APPLICANT ACKNOWLEDGES AND SUBMITS:

a. That the Company’s sole obligation under the Guarantee, and this Application, shall be to conduct a search in accordance with the terms and provision of this Application and to furnish copies of the Designated Documents to Applicant as a part of the Guarantee. The Company shall have no obligation to read, examine, or interpret the Designated Documents.

b. That the Company shall not be obligated under this Guarantee to pay any costs, attorneys’ fees, or expenses incurred in any action, proceeding, or other claim brought against Applicant.

c. That the Guarantee is limited in scope and is not an [**abstract of title**](http://practicallawconnect.thomsonreuters.com/Document/Ieaf7162d641111e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), title opinion, preliminary or title report, or commitment to issue title insurance.

d. That the Guarantee is not to be relied upon by Applicant or any other person as a representation of the status of title to the Subject Property.

e. That Applicant shall have no right of action against the Company, whether or not based on negligence, except under the terms and provisions of, and subject to all limitations of this Application and the Guarantee.

f. That the Guarantee is not valid and the Company shall have no liability thereunder unless this Application, or a copy thereof, is attached thereto.

g. That the Guarantee does not assure that Applicant will be entitled to any innocent landowner or purchaser defenses which may be available under CERCLA.

**LIMITATION OF LIABILITY**

APPLICANT RECOGNIZES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF DAMAGES WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN THE GUARANTEE. APPLICANT RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITIES PURSUANT TO CERCLA. THEREFORE, APPLICANT UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REQUESTED GUARANTEE UNLESS THE COMPANY’S LIABILITY IS STRICTLY LIMITED. APPLICANT AGREES WITH THE PROPRIETY OF THIS LIMITATION AND AGREES TO BE BOUND BY ITS TERMS.

THIS LIMITATION IS AS FOLLOWS:

APPLICANT AGREES, AS A PART OF THE CONSIDERATION FOR THE ISSUANCE OF THIS GUARANTEE, THAT THE COMPANY SHALL BE LIABLE TO APPLICANT UNDER THIS GUARANTEE ONLY IN THE EVENT THAT ENVIRONMENTAL HAZARDOUS WASTE OR TOXIC SUBSTANCE CLEAN-UP COSTS OR PENALTIES ARE ACTUALLY IMPOSED ON APPLICANT, OR AGAINST THE SUBJECT PROPERTY, SOLELY BY REASON OF AN ERROR OR OMISSION BY THE COMPANY IN FAILING TO IDENTIFY AND ATTACH THE DESIGNATED DOCUMENTS TO THE GUARANTEE, WHICH ERROR OR OMISSION BY THE COMPANY HAS CAUSED APPLICANT TO FAIL TO COMPLY WITH THE REQUIREMENTS FOR DUE DILIGENCE INQUIRY OF PRIOR OWNERSHIPS AND USES IN CONNECTION WITH THE INNOCENT LAND OWNER OR PURCHASER DEFENSES UNDER CERCLA; AND THEN THE LIABILITY SHALL BE A ONE TIME PAYMENT TO APPLICANT OF $\_\_\_\_\_\_\_\_. ACCORDINGLY, APPLICANT REQUESTS THAT THE GUARANTEE BE ISSUED WITH THIS LIMITATION AS A PART OF THE CONSIDERATION THAT APPLICANT GIVES THE COMPANY TO PREPARE AND ISSUE THE GUARANTEE.

APPLICANT CERTIFIES THAT HE HAS READ AND UNDERSTANDS ALL OF THE TERMS, LIMITATIONS AND CONDITIONS OF THIS APPLICATION.

Executed this \_\_\_\_\_ day of \_\_\_\_\_20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_

Applicant

[This application must be signed by the Applicant itself or an attorney at law representing the Applicant.]

**RECORDED DOCUMENT GUARANTEE**

|  |  |
| --- | --- |
| NO. \_\_\_\_\_ LIABILITY $\_\_\_\_\_\_\_\_ |  |
| \_\_\_\_\_ [FEE \_\_\_\_\_] |  |

BLANK TITLE INSURANCE COMPANY a \_\_\_\_\_, corporation, herein called the Company, SUBJECT TO THE TERMS, LIMITATIONS AND CONDITIONS OF THE APPLICATION FOR THIS GUARANTEE EXECUTED ON THE \_ DAY OF \_\_\_\_\_, 20\_\_, WHICH APPLICATION IS ATTACHED HERETO AND MADE A PART HEREOF GUARANTEES

herein called the Assured, against loss not exceeding the liability amount stated above which the Assured shall sustain by reason of any incorrectness in the assurances set forth in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

Any claim or other notice to the Company shall be in writing and shall be addressed to the Company at [*fill in*].

THIS GUARANTEE IS NOT VALID AND THE COMPANY SHALL HAVE NO LIABILITY HEREUNDER UNLESS THE APPLICATION, OR A COPY THEREOF, REFERRED TO ABOVE AND SCHEDULE A ARE ATTACHED HERETO.

Dated:\_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature

**SCHEDULE A**

|  |  |
| --- | --- |
| RECORDED DOCUMENT GUARANTEE | NO.\_\_\_\_\_ |

The assurances referred to on the face page are, that, based on a search of the records indicated in the Application referred to on the face page hereof, the following identified and attached documents constitute all of the Designated Documents requested in the Application.

Designated Documents:

1. \_\_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_

3. \_\_\_\_\_\_\_\_\_\_\_

4. \_\_\_\_\_\_\_\_\_\_\_

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| **Footnotes** | |
| [\*](#co_fnRef_I85578f50d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix H1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85660e40d6ee11ea8f41e1f6f2a)**

APPENDIX H1. ALTA Recorded Document Certificate (October 3, 1990)[\*](#co_footnote_I85663550d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Recorded Document Certificate |
|  | Adopted 10/3/90 |
|  | |

**APPLICATION FOR THE ISSUANCE OF A RECORDED DOCUMENT CERTIFICATE**

Applicant, for the purpose of purchase, sale, lease or loan, is in the process of investigating the prior ownerships and uses of the Subject Property. As only a component of that investigation, Applicant hereby requests \_\_\_\_\_, the Company, to furnish Applicant with a Recorded Document Certificate, which Certificate will set forth and attach copies of the Designated Documents. The Certificate is being provided to Applicant solely for the purpose of facilitating any innocent landowner or purchaser defenses which may be available under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. It is provided for the sole use and benefit of Applicant and may not be used or relied upon by any other party.

1. The following terms when used in the Application and the Recorded Document Certificate shall mean:

a. [**CERCLA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec61a2ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) - Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

b. Certificate - Recorded Document Certificate

c. Company - the entity providing and executing the Recorded Document Certificate.

d. Designated Documents - Those documents specifically designated by Applicant in paragraphs 3a or 3b and in paragraph 4 and which describe the Subject Property or any portion thereof and which are not Excluded Documents.

e. Excluded Documents - Any of the following:

(i) documents indexed in the Company’s title plant records by name only,

(ii) documents pertaining to an estate or interest in minerals, gas and oil, or other hydrocarbon substances,

(iii) documents pertaining to water rights, claims or title to water, or

(iv) documents recorded or indexed outside the [**chain of title**](http://practicallawconnect.thomsonreuters.com/Document/I2e45ae37642211e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), whether or not the documents impart [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to purchasers of the Subject Property for value and without knowledge.

f. Land Records - Those records in which under state statutes the Designated Documents must be recorded in order to impart constructive notice to purchasers of the Subject Property for value and without knowledge.

g. Subject Property - The real property described in the Application, but not including any severed mineral estate.

2. The Subject Property is described as follows:

3. Applicant hereby requests the Company to issue the Certificate identifying only the following Designated Documents which are:

a. \_\_\_ currently posted in the Company’s title plant and which were recorded in the Land Records from (Date) through (Date).

b. \_\_\_ recorded and indexed in the grantor-grantee indices in the Land Records of (Name of County) (State) from (Date) through (Date).

[\_\_\_ Other.]

4. Designated Documents as defined in paragraph 1(d) above:

a. \_\_\_ Deeds

b. \_\_\_ Leases and Subleases

c. \_\_\_ Mortgages/Deeds of Trust

d. \_\_\_ Environmental Protection Liens recorded pursuant to CERCLA

e. \_\_\_ All documents

5. Applicant specifically instructs the Company to disclose in the Certificate only the Designated Documents indicated above. Applicant understands that during the course of searching the records covered by the Certificate the Company may find or have knowledge of documents of a type other than the Designated Documents requested by Applicant. Even if the Company knows or would have reason to know Applicant may have an interest in these other documents, Applicant imposes no duty or responsibility on the Company to disclose those documents or their content to Applicant either through the Certificate or otherwise.

6. BY THE EXECUTION AND SUBMISSION OF THIS APPLICATION TO THE COMPANY, APPLICANT ACKNOWLEDGES AND SUBMITS:

a. That the Company’s sole obligation under the Certificate, and this Application, shall be to conduct a search in accordance with the terms and provision of this Application and to furnish copies of the Designated Documents to Applicant as a part of the Certificate. The Company shall have no obligation to read, examine, or interpret the Designated Documents.

b. That the Company shall not be obligated under this Certificate to pay any costs, attorneys’ fees, or expenses incurred in any action, proceeding, or other claim brought against Applicant.

c. That the Certificate is limited in scope and is not an [**abstract of title**](http://practicallawconnect.thomsonreuters.com/Document/Ieaf7162d641111e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), title opinion, preliminary or title report, or commitment to issue title insurance.

d. That the Certificate is not to be relied upon by Applicant or any other person as a representation of the status of title to the Subject Property.

e. That Applicant shall have no right of action against the Company, whether or not based on negligence, except under the terms and provisions of, and subject to all limitations of this Application and the Certificate.

f. That the Certificate is not valid and the Company shall have no liability thereunder unless this Application, or a copy thereof, is attached thereto.

g. That the Certificate does not assure that Applicant will be entitled to any innocent landowner or purchaser defenses which may be available under CERCLA.

**LIMITATION OF LIABILITY**

APPLICANT RECOGNIZES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF DAMAGES WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN THE CERTIFICATE. APPLICANT RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITIES PURSUANT TO CERCLA. THEREFORE, APPLICANT UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REQUESTED CERTIFICATE UNLESS THE COMPANY’S LIABILITY IS STRICTLY LIMITED. APPLICANT AGREES WITH THE PROPRIETY OF THIS LIMITATION AND AGREES TO BE BOUND BY ITS TERMS.

THIS LIMITATION IS AS FOLLOWS:

APPLICANT AGREES, AS A PART OF THE CONSIDERATION FOR THE ISSUANCE OF THIS CERTIFICATE, THAT THE COMPANY SHALL BE LIABLE TO APPLICANT UNDER THIS CERTIFICATE ONLY IN THE EVENT THAT ENVIRONMENTAL HAZARDOUS WASTE OR TOXIC SUBSTANCE CLEAN-UP COSTS OR PENALTIES ARE ACTUALLY IMPOSED ON APPLICANT, OR AGAINST THE SUBJECT PROPERTY, SOLELY BY REASON OF AN ERROR OR OMISSION BY THE COMPANY IN FAILING TO IDENTIFY AND ATTACH THE DESIGNATED DOCUMENTS TO THE CERTIFICATE, WHICH ERROR OR OMISSION BY THE COMPANY HAS CAUSED APPLICANT TO FAIL TO COMPLY WITH THE REQUIREMENTS FOR DUE DILIGENCE INQUIRY OF PRIOR OWNERSHIPS AND USES IN CONNECTION WITH THE INNOCENT LAND OWNER OR PURCHASER DEFENSES UNDER CERCLA; AND THEN THE LIABILITY SHALL BE A ONE TIME PAYMENT TO APPLICANT OF $\_\_\_\_\_\_\_\_.

ACCORDINGLY, APPLICANT REQUESTS THAT THE CERTIFICATE BE ISSUED WITH THIS LIMITATION AS A PART OF THE CONSIDERATION THAT THE APPLICANT GIVES THE COMPANY TO PREPARE AND ISSUE THE CERTIFICATE.

APPLICANT CERTIFIES THAT HE HAS READ AND UNDERSTANDS ALL OF THE TERMS, LIMITATIONS AND CONDITIONS OF THIS APPLICATION.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_

Applicant

[This application must be signed by the Applicant itself or an attorney at law representing the Applicant.]

**RECORDED DOCUMENT CERTIFICATE**

Based on a search of the records indicated in the Application executed by the Applicant on the \_\_\_ day of \_\_\_ \_\_\_, 20\_\_, which Application, or a copy thereof, is attached hereto and made a part hereof, the undersigned \_\_\_\_\_\_\_\_\_\_\_, the Company, hereby certifies to (Applicant) that the following identified and attached documents constitute all of the Designated Documents requested in the Application.

Designated Documents:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

The certification provided by this Certificate is not valid, and the Company shall have no liability hereunder unless there is attached hereto the Application, or a copy thereof, executed the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Blank Title Insurance Company or Agent

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| **Footnotes** | |
| [\*](#co_fnRef_I85660e40d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix I (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I857158e0d6ee11ea8f41e1f6f2a)**

APPENDIX I. ALTA Facultative Reinsurance Agreement[\*](#co_footnote_I85717ff0d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Faculative Reinsurance Agreement |
|  | Revised 6/17/2006 |
|  | Section V-1 |
|  | |

BLANK TITLE INSURANCE COMPANY

[**AMERICAN LAND TITLE ASSOCIATION**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))

FACULTATIVE REINSURANCE AGREEMENT

(6-17-06)

These facultative reinsurance provisions, including Schedule I, constitute the Facultative Reinsurance Agreement entered into by and between Ceder and Reinsurer shown in Schedule I.

PROVISIONS

WHEREAS, Ceder has assumed or is about to assume a title insurance risk pursuant to its policy or policies shown in Schedule I, herein called the Policy; and

WHEREAS, Ceder desires to retain, unceded, a Primary Loss Risk under the Policy and to cede and reinsure all or part of the excess Loss Risk in the amounts and proportionate shares shown in Schedule I; and

WHEREAS, Ceder and Reinsurer desire to arrange for the allocation of protection to the party entitled to the protection of the Policy, herein called the Insured; and

WHEREAS, Reinsurer desires to assume its share of Secondary Loss Risk shown in Schedule I.

NOW, THEREFORE, it is mutually agreed between Ceder and each Reinsurer as follows.

1. CEDER’S CESSION AND WARRANTY

Ceder, to induce Reinsurer to accept the offer of reinsurance, represents and warrants that Ceder has made disclosure of (a) the Policy being reinsured, and (b) any extrahazardous risk of which Ceder has actual knowledge. Ceder shall immediately upon issuance of the Policy forward a conformed copy to Reinsurer and pay its premium for reinsurance.

Ceder cedes to Reinsurer the Reinsurer’s coordinate and proportionate share of the Secondary Loss Risk shown in Schedule I and Ceder shall retain without reinsurance hereunder the entire amount of Primary Loss Risk shown in Schedule I, and the unceded portion, if any, of the Secondary Loss Risk.

2. REINSURER’S ASSUMPTION

Reinsurer assumes its coordinate and proportionate share of Secondary Loss Risk shown in Schedule I and not the coordinate and proportionate share, if any, of Ceder or of any other Reinsurer.

The liability of Reinsurer shall begin simultaneously with that of Ceder under the Policy, without notice of the issuance of its Policy or payment of the reinsurance premium.

The liability of Reinsurer and any loss payable by Reinsurer under this Agreement shall be limited to expressed contractual liability of Ceder under the Policy, not including punitive or exemplary damages, and does not include any other contractual or any noncontractual liability of Ceder.

3. DIRECT ACCESS

Provided Insured shall give to Reinsurer notice of any claim under the Policy within a reasonable time after notice of the claim is given to or received by Ceder and is pursuing its remedies under the Policy against Ceder, unless prevented by law or regulation, then in the event that under the terms of the Policy Insured has sustained a loss or losses which, in the aggregate, exceeds Ceder’s Primary Loss Risk, the liability of Reinsurer under this Agreement shall be extended to and in favor of Insured. Failure to so notify as provided in this paragraph shall not defeat the rights of the Insured hereunder unless Reinsurer shall establish that it was actually prejudiced by the failure, and then only to the extent of the prejudice. Thereafter, if Insured requests payment of Reinsurer’s liability under this Agreement directly to Insured, then this Agreement may be enforced by Insured directly against Reinsurer to the extent of Reinsurer’s liability to Ceder hereunder, without diminution, defense, setoff or counterclaim which Reinsurer may have against Ceder. Any defense to liability which Ceder has against Insured shall inure to Reinsurer.

Reinsurer agrees that Insured shall have the right to commence a legal action to enforce this Agreement against it in the state in which the land is located or in any state where Reinsurer is qualified to do business, provided that when any service of process is made in any action, a copy is sent by Registered or Certified Mail to Reinsurer at its address set forth in Schedule I.

4. NOTICES, INVESTIGATION AND SETTLEMENT OF CLAIMS

Ceder shall have full charge of the investigation, negotiation, litigation and settlement of all claims under the Policy. Upon receipt of notice from Insured of a claim under the Policy or upon learning of a potential claim thereunder, Ceder shall notify Reinsurer of the claim or potential claim. Ceder shall notify Reinsurer of any proposed substantial payments or settlement of such claim and shall give Reinsurer reasonable opportunity to investigate the claim at its own expense. Failure to so notify as provided in this paragraph shall not defeat the rights of Ceder hereunder unless Reinsurer shall be actually prejudiced by the failure, and then only to the extent of the prejudice.

Reinsurer shall have the right, but shall not be obligated, to join in any action brought by or against Ceder under the Policy. Reinsurer shall have the right, through such representatives as it may designate, to inspect and copy, at any reasonable time at the office of Ceder, any and all searches, abstracts, certificates, correspondence, attorney’s opinions, and intra-company communications and other documents and records relating to the Policy. This right is and shall continue to be a right in rem and shall follow and attach to said documents and records regardless of changes in ownership or possession.

Unless Insured has given Reinsurer notice that Insured intends to enforce this Agreement directly against Reinsurer and requests payment of Reinsurer’s liability under this Agreement directly to Insured, as provided in Section 3 of this Agreement, Reinsurer shall pay the amount of its liability determined hereunder to Ceder within fifteen days after notice and demand by Ceder. Each payment by Reinsurer to Ceder shall satisfy pro tanto the amount of Reinsurer’s liability hereunder to Insured and Ceder. The payment shall be received by Ceder, if not by way of reimbursement, in trust to be paid to or for the account of Insured, together with all other amounts similarly applicable, in satisfaction of Ceder’s liability under the Policy.

If Insured shall give notice to Reinsurer that Insured intends to enforce this Agreement directly against Reinsurer and requests payment of Reinsurer’s liability under this Agreement directly to Insured, as provided in Section 3 of this Agreement, no payment to Ceder of any part of Reinsurer’s liability to Insured shall be made without the written consent of Insured. Any payment by Reinsurer of its liability to Insured shall discharge Ceder’s and Reinsurer’s liability to Insured pro tanto. If Reinsurer makes payments directly to Insured as required by this Agreement, Reinsurer’s liability to Ceder shall be reduced pro tanto.

5. PAYMENT OF LOSSES

Any loss or aggregate of losses sustained and payable by Ceder under its policy including costs, attorney’s fees and expenses, which do not exceed the amount of Primary Loss Risk retained by Ceder shall be sustained and paid by Ceder without recourse to the Reinsurer. Reinsurer’s liability and any loss or aggregate of losses payable by Reinsurer under Section 2 of this agreement, including costs, attorney’s fees and expenses, shall be the amount of Reinsurer’s proportionate share of the Secondary Loss Risk as shown in Schedule I that exceeds the Primary Loss Risk retained by Ceder.

If the loss or aggregate of all losses under the Policy exceeds the amount thereof, the Ceder shall pay that portion of the excess as the proportion of its retained Loss Risk, both Primary and Secondary, bears to the amount of the Policy, and the balance of the excess shall be divided among the Reinsurers in the proportions that the amount assumed by each bears to the amount of the Policy.

Notwithstanding anything stated in this Section, Ceder’s retained Loss Risk, whether Primary, Secondary, or according to the preceding paragraph, shall not be reduced and Reinsurer’s liability shall not be increased by the payment of any loss not assumed by Reinsurer under Section 2.

6. INSOLVENCY OF CEDER

The reinsurance under this Agreement shall be payable by Reinsurer on the basis of the liability of Reinsurer under this Agreement without diminution because of the insolvency of Ceder.

In the event of insolvency of Ceder, the liquidator, receiver or statutory successor of Ceder shall give written notice to Reinsurer of the pendency of a claim against Ceder on the Policy within a reasonable time after the claim is filed in the insolvency proceeding. During the pendency of the claim, Reinsurer may investigate the claim and interpose, at its own expense, in the proceeding where the claim is to be adjudicated, any defense or defenses which it may deem available to Ceder or its liquidator, receiver or statutory successor. The expense so incurred by Reinsurer shall be charged against the insolvent company as part of the expense of liquidation.

In the event that two or more Reinsurers are involved in the same claim and a majority in interest elects to interpose a defense to the claim, the expense shall be apportioned in accordance with the terms of this Agreement as though the expense had been incurred by Ceder.

In the event of the insolvency of Ceder, the reinsurance under this Agreement shall be payable by Reinsurer directly to Ceder, pursuant to Section 4 or to its liquidator, receiver or statutory successor, except when the direct access provisions of Section 3 and the notice provisions of Section 4 have been implemented, in which case, it shall be paid directly to Insured.

7. [**RECOUPMENT**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0f49ef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) AND SUBROGATION

After payment of any loss or losses hereunder by Reinsurer, it shall be the duty of Ceder, by its right of subrogation or otherwise, to proceed diligently to recoup the losses paid. The net amount after expenses of collection of any recoupment or salvage, shall be distributed and paid to Reinsurer in the fractional proportions set forth on Schedule I. Any surplus, after full recoupment of losses sustained on the Secondary Loss Risk, shall be retained by Ceder in reduction of loss or losses paid on its Primary Loss Risk.

In addition to the right of subrogation, which is secured to Ceder by the conditions of the Policy, Ceder will retain all the rights secured to it thereby unaffected by this agreement. In the event, however, of the temporary or permanent discontinuance of business by Ceder, or if Ceder becomes insolvent, or if Ceder fails to proceed to recoup any loss or losses paid as aforesaid, Reinsurer shall be and is hereby subrogated to all right of Ceder to recoup any losses paid by it hereunder.

8. RIGHTS OF INSURED NOT PREJUDICED

Ceder is authorized to furnish Insured with a duplicate original or conformed copy of this Agreement.

Neither this Agreement nor any modification thereof shall prejudice the rights of Insured under the Policy or conferred upon Insured under this Agreement.

9. LAWS APPLICABLE

The provisions of this Agreement shall be governed by the laws of the situs of the real property described in the Policy.

10. ACTIONS BY OR ON BEHALF OF CEDER

In the event Reinsurer is not licensed or accredited in the state of [**domicile**](http://practicallawconnect.thomsonreuters.com/Document/I6117211f4da011e598dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the Ceder, Reinsurer agrees: (1) that, in the event of the failure of Reinsurer to perform its obligations under the terms of this Agreement, Reinsurer, at the request of Ceder, shall submit to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such panel or court jurisdiction, and will abide by the final decision of such panel or court or of any appellate court in the event of an appeal; and (2) to designate the appropriate insurance regulatory authority or an attorney in fact as its true and lawful agent for the purpose of service of any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

11. SEVERABILITY

In the event any provision of this Agreement is held invalid or unenforceable under applicable law, the Agreement shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

12. NOTICES - WHERE SENT

Any notice given hereunder shall be addressed to the party to receive the notice at its mailing address set forth in Schedule I.

13. EFFECTIVE DATE

This Agreement shall be in effect between Ceder and Reinsurer from the time a counterpart of Schedule I is executed by Reinsurer notwithstanding that other counterparts are not executed by other Reinsurers.

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| **Footnotes** | |
| [\*](#co_fnRef_I857158e0d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix AA-1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85777360d6ee11ea8f41e1f6f2a)**

APPENDIX AA-1. ALTA Endorsement 1–06 Street Assessments[\*](#co_footnote_I85777361d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement 1 (Street Assessments) |
|  | Revised 6/17/2006 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

Blank Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of the lack of priority of the lien of the Insured Mortgage over the lien of any assessments for street improvements under construction or completed at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Blank Title Insurance Company*

Authorized Signatory

ALTA Form 1 (Street Assessments)

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| **Footnotes** | |
| [\*](#co_fnRef_I85777360d6ee11ea8f41e1f6f2aa78) | The author thanks the American Land Title Association [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix AA-2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I857d18b0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-2. ALTA Endorsement 2–06 Truth in Lending[\*](#co_footnote_I857d3fc0d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 2 (Truth in Lending) |
|  | Revised 6/17/2006 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

Blank Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of:

any final judgment of a court of competent jurisdiction that either the lien of the Insured Mortgage has been terminated or the Title of an Insured, who has acquired all or any part of the Land by foreclosure, trustee’s sale, conveyance in lieu of foreclosure, or other legal manner, which discharges the lien of the Insured Mortgage, has been defeated by a valid exercise of the right of rescission conferred by the Federal Truth-in-Lending Act and that the right or rights of rescission existed because neither the credit transaction evidenced by the Insured Mortgage nor the right of rescission was exempted or excepted by the provisions of Regulation Z (12 CFR 226).

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date: \_\_\_\_\_\_\_\_

Blank Title Insurance Company

Authorized Signatory

ALTA Form 2

F.A. Form 33

CLTA Form 125

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2 Title Ins. Law Appendix AA-3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8583cf70d6ee11ea8f41e1f6f2a)**

APPENDIX AA-3. ALTA Endorsement 3–06 Zoning—Unimproved Land[\*](#co_footnote_I8583f680d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 3 (Zoning—Unimproved Land) |
|  | Revised 6/17/06 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

Blank Title Insurance Company

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,

a. According to applicable zoning ordinances and amendments, the Land is not classified Zone \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

b. The following use or uses are not allowed under that classification:

2. There shall be no liability under this endorsement based on

a. Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.a. does not modify or limit the coverage provided in Covered Risk 5.

b. The invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.

c. The refusal of any person to purchase, lease or lend money on the estate or interest covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date: \_\_\_\_\_\_\_\_

Blank Title Insurance Company

Authorized Signatory

ALTA [**Form 3**](http://practicallawconnect.thomsonreuters.com/Document/I2104b6d9ef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (Zoning),

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| **Footnotes** | |
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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I858ca910d6ee11ea8f41e1f6f2a)**

APPENDIX AA-3.1. ALTA Endorsement 3.1–06 Zoning—Completed Structure[\*](#co_footnote_I858cd020d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement 3.1 (Zoning-Completed Structure) |
|  | Revised 6/10/2006 |
|  | |

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Zoning—Completed Structure

Attached to Policy No. \_\_\_\_\_\_\_\_

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,

a. according to applicable zoning ordinances and amendments, the Land is not classified Zone \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

b. the following use or uses are not allowed under that classification:

c. There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a perquisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.

2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction

a. prohibiting the use of the Land, with any existing structure, as insured in paragraph 1.b.; or

b. requiring the removal or alteration of the structure on the basis that, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:

i. Area, width, or depth of the Land as a building site for the structure

ii. Floor space area of the structure

iii. Setback of the structure from the property lines of the Land

iv. Height of the structure, or

v. Number of parking spaces.

3.There shall be no liability under this endorsement based on

a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;

b. the refusal of any person to purchase, lease or lend money on the estate or interest covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated:

Countersigned

By:\_\_\_\_\_\_\_\_

Authorized Officer or Agent

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| **Footnotes** | |
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2 Title Ins. Law Appendix AA-3.3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85a5af50d6ee11ea8f41e1f6f2a)**

APPENDIX AA-3.3. Zoning—Completed Improvement—Non-Conforming Use Endorsement

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| APPENDIX AA-3.3 |  |
| ALTA Endorsement 3.3[-06] | Zoning—Completed Improvement—Non-Conforming Use |
|  | Adopted 12-01-2018 |
|  | |

[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 3.3[-06] ZONING—COMPLETED IMPROVEMENT—NON-CONFORMING USE ENDORSEMENT

This endorsement is issued as part of

Policy Number \_\_\_\_\_

issued by

BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement:

a. “Improvement”: A building located on the Land at the Date of Policy.

b. “Non-Conforming Use”: The use of the Land described in Section 2.a. existing at the Date of Policy and before the Zoning Ordinance was enacted, although the use is not authorized in the Zoning Ordinance.

c. “Zoning Ordinance”: A municipal or county zoning ordinance or zoning regulation applicable to the Land at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured resulting from:

a. The following Non-Conforming Use not being allowed by the municipality or county because the Non-Conforming Use violates a Zoning Ordinance:

*[DRAFTING INSTRUCTION: Describe the existing Non-Conforming Use]*

b. A final decree of a court of competent jurisdiction either prohibiting the Non-Conforming Use or requiring the removal or alteration of the Improvement because, at the Date of Policy, the Non Conforming Use violates a Zoning Ordinance with respect to any of the following matters:

i. The area, width, or depth of the Land as a building site for the Improvement;

ii. The floor space area of the Improvement;

iii. A setback of the Improvement from the property lines of the Land;

iv. The height of the Improvement; or

v. The number of parking spaces.

3. Section 2 does not insure against loss or damage and the Company will not pay costs, attorneys’ fees, or expenses resulting from:

a. The lack of compliance with any condition, restriction, or requirement contained in a Zoning Ordinance regarding the continuation or maintenance of the Non-Conforming Use;

b. The failure to secure necessary consents or authorizations as a condition for continuing the Non Conforming Use;

c. The invalidity of a Zoning Ordinance, the effect of which is to prohibit the Non-Conforming Use;

d. Any change, cessation, abandonment, or replacement of the Non-Conforming Use or an Improvement;

e. A prohibition to restore an Improvement;

f. The violation of or the lack of compliance with any law, order, or regulation regarding the continuation or maintenance of the Non-Conforming Use or an Improvement;

g. Any law, order, or regulation requiring the amortization, expiration, or elimination by passage of time of the Non-Conforming Use; or

h. Any refusal to purchase, lease, or lend money on the Title.

This endorsement is issued as part of the policy. Except as this endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, (iv) insure against loss or damage exceeding the Amount of Insurance, or (v) increase the Amount of Insurance. To the extent a provision of the policy or any prior endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and any prior endorsement.

*[Witness clause optional]*

*[DATE]*

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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2 Title Ins. Law Appendix AA-3.4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85af4c40d6ee11ea8f41e1f6f2a)**

APPENDIX AA-3.4. Zoning—No Zoning Classification Endorsement

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| APPENDIX AA-3.4 |  |
| ALTA Endorsement 3.4[-06] | Zoning—No Zoning Classification |
|  | Adopted 12-01-2018 |
|  | |

[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 3.4[-06] ZONING—NO ZONING CLASSIFICATION ENDORSEMENT

This endorsement is issued as part of

Policy Number \_\_\_\_\_

issued by

BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement:

a. “Improvement”: A building or structure located on the Land at the Date of Policy.

b. “Zoning Ordinance”: A municipal or county zoning ordinance or zoning regulation applicable to the Land at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured resulting from:

a. The following use not being allowed by the municipality or county because the use violates a Zoning Ordinance:

*[DRAFTING INSTRUCTION: Describe the existing use]*

b. A final decree of a court of competent jurisdiction either prohibiting the use or requiring the removal or alteration of the Improvement because, at the Date of Policy, the use violates a Zoning Ordinance with respect to any of the following matters:

i. The area, width, or depth of the Land as a building site for the Improvement;

ii. The floor space area of the Improvement;

iii. A setback of the Improvement from the property lines of the Land;

iv. The height of the Improvement; or

v. The number of parking spaces.

3. Section 2 does not insure against loss or damage and the Company will not pay costs, attorneys’ fees, or expenses resulting from:

a. Any other regulation or restriction of use or activity on the Land:

i. Imposed by a covenant, condition, restriction, or limitation on the Title; or

ii. Imposed by a state or federal law, statute, code, enactment, ordinance, permit, regulation, rule, order, or court decision;

b. Any refusal to purchase, lease, or lend money on the Title; or

c. Any zoning ordinance or zoning regulation adopted after the Date of Policy.

This endorsement is issued as part of the policy. Except as this endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, (iv) insure against loss or damage exceeding the Amount of Insurance, or (v) increase the Amount of Insurance. To the extent a provision of the policy or any prior endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and any prior endorsement.

*[Witness clause optional]*

*[DATE]*

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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2 Title Ins. Law Appendix AA-4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85b566c0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-4. ALTA Endorsement 4–06 Condominium[\*](#co_footnote_I85b566c1d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 4 (Condominium) |
|  | Revised 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and its [**common elements**](http://practicallawconnect.thomsonreuters.com/Document/Id2849a15545411e698dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.

2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.

3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title. As used in this paragraph 3, the words “restrictive covenants” do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

4. The priority of any lien for charges and assessments at Date of Policy provided for in the condominium statutes and condominium documents over the lien of any Insured Mortgage identified in Schedule A.

5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.

6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.

7. The failure of the Title by reason of a [**right of first refusal**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0349bef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), to purchase the unit and its common elements that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

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By:\_\_\_\_\_\_\_\_

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**Title Insurance Law** | August 2020 Update

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**Appendices****[\*](#co_footnote_I85bd07e0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-4.1. ALTA Endorsement 4.1–06 Condominium[\*](#co_footnote_I85be4060d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 4.1 (Condominium) |
|  | Revised 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued By

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and its [**common elements**](http://practicallawconnect.thomsonreuters.com/Document/Id2849a15545411e698dc8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.

2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements

3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title. As used in this paragraph 3, the words “restrictive covenants” do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at Date of Policy.

5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel

6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.

7. The failure of the Title by reason of a [**right of first refusal**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0349bef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

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By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85c481f0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-5. ALTA Endorsement 5–06 Planned Unit Development[\*](#co_footnote_I85c481f1d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 5 (Planned Unit Development) |
|  | Revised 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the Land. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title. As used in this paragraph 1, the words “restrictive covenants” do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

2. The priority of any lien for charges and assessments at Date of Policy in favor of any association of homeowners which are provided for in any document referred to in Schedule B over the lien of any Insured Mortgage identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of the Title by reason of a [**right of first refusal**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0349bef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to purchase the Land which was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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**Appendices****[\*](#co_footnote_I85cd3480d6ee11ea8f41e1f6f2a)**

APPENDIX AA-5.1. ALTA Endorsement 5.1–06 Planned Unit Development[\*](#co_footnote_I85cd3481d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 5.1 (Planned Unit Development) |
|  | Revised 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title. As used in this paragraph 1, the words “restrictive covenants” do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

2. Any charges or assessments in favor of any association of homeowners, which are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.

3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of the Title by reason of a [**right of first refusal**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0349bef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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2 Title Ins. Law Appendix AA-6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85d48780d6ee11ea8f41e1f6f2a)**

APPENDIX AA-6. ALTA Endorsement 6–06 Variable Rate Mortgage[\*](#co_footnote_I85d4ae90d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement 6. (Variable Rate Mortgage) |
|  | Revised 6/17/2007 |
|  | |

[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) FORM 6-06 VARIABLE RATE

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

Blank Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for changes in the rate of interest.

2. Loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by the changes in the rate of interest.

”Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or

2. any consumer credit protection or truth in lending law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date: \_\_\_\_\_\_\_\_

Blank Title Insurance Company

Authorized Signatory

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85dc9dd0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-6.1. ALTA Endorsement 6.1 (June 1, 1987) Variable Rate Mortgage—Regulations[\*](#co_footnote_I85dc9dd1d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 6.1 (Variable Rate Mortgage-Regulations) |
|  | Revised 6/1/87 |
|  | |

**ENDORSEMENT**

**Attached to Policy No.**

**Issued by**

**BLANK TITLE INSURANCE COMPANY**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.

2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

”Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage by reason of the failure of the insured to comply with the following statutes or regulations concerning variable rate mortgages:

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix AA-6.2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

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**Appendices****[\*](#co_footnote_I85e35490d6ee11ea8f41e1f6f2a)**

APPENDIX AA-6.2. ALTA Endorsement 6.2–06 Variable Rate Mortgage—Negative Amortization[\*](#co_footnote_I85e35491d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 6.2 (Variable Rate Mortgage-Negative Amortization) |
|  | Revised 6/17/06 |
|  | |

[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) FORM 6.2-06 VARIABLE RATE, [**NEGATIVE AMORTIZATION**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0b91ef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

Blank Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for (a) interest on interest, (b) changes in the rate of interest, or (c) the addition of unpaid interest to the principal balance of the loan.

2. Loss or priority of the lien of the Insured Mortgage as security for the principal balance of the loan, including any unpaid interest which was added to principal in accordance with the provisions of the insured mortgage, interest on interest, or interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by (a) changes in the rate of interest, (b) interest on interest, or (c) increases in the unpaid principal balance of the loan resulting from the addition of unpaid interest.

”Changes in the rate of interest,” as used in this endorsement shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or

2. any consumer credit protection or truth in lending law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Blank Title Insurance Company

Authorized Signatory

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85eddbe0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-8.1. ALTA Endorsement 8.1–06 Environmental Protection Lien[\*](#co_footnote_I85eddbe1d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement 8.1 (Environmental Protection Lien) |
|  | Revised 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The insurance afforded by this endorsement is only effective if the Land is used or is to be used primarily for residential purposes.

The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over

(a) any environmental protection lien that, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting [**constructive notice**](http://practicallawconnect.thomsonreuters.com/Document/Id4cfb60af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of matters relating to real property to purchasers for value and without knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or

(b) any environmental protection lien provided by any state statute in effect at Date of Policy, except environmental protection liens provided by the following state statutes:

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

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2 Title Ins. Law Appendix AA-9 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85f83c20d6ee11ea8f41e1f6f2a)**

APPENDIX AA-9. ALTA Endorsement 9–06 Restrictions, Encroachments, Minerals[\*](#co_footnote_I85f86330d6ee11ea8f41e1f6f2a)

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following:

a. Covenants, conditions, or restrictions under which the lien of the Insured Mortgage can be divested, subordinated, or extinguished, or its validity, priority, or enforceability impaired.

b. Unless expressly excepted in Schedule B

(i) Present violations on the Land of any enforceable covenants, conditions, or restrictions, and any existing improvements on the land described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that violate any building setback lines shown on a [**plat**](http://practicallawconnect.thomsonreuters.com/Document/Id615f8c7b8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of subdivision recorded or filed in the Public Records.

(ii) Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (A) establishes an easement on the Land; (B) provides a lien for liquidated damages; (C) provides for a private charge or assessment; (D) provides for an option to purchase, a [**right of first refusal**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0349bef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or the prior approval of a future purchaser or occupant.

(iii) Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.

(iv) Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.

(v) Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Any future violation on the Land of any existing covenants, conditions, or restrictions occurring prior to the acquisition of title to the estate or interest in the Land by the Insured, provided the violation results in

a. the invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage; or

b. the loss of Title if the Insured shall acquire Title in satisfaction of the Indebtedness secured by the Insured Mortgage.

3. Damage to existing improvements, including lawns, shrubbery, or trees

a. that are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;

b. resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.b(i) and 5, the words covenants, conditions, or restrictions do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I85ff19f0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-9.1. ALTA Endorsement 9.1–06 Restrictions, Encroachments, Minerals—Owner’s Policy—Unimproved Land[\*](#co_footnote_I85ff4100d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 9.1 (Restrictions, Encroachments, Minerals - Owner’s Policy - Unimproved Land) |
|  | Adopted 06/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

a. Present violations on the Land of any enforceable covenants, conditions, or restrictions.

b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a [**right of first refusal**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0349bef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.

c. Any encroachment onto the Land of existing improvements located on adjoining land.

d. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Damage to buildings constructed on the Land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraph 1.a., the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix AA-9.2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86058290d6ee11ea8f41e1f6f2a)**

APPENDIX AA-9.2. ALTA Endorsement 9.2–06 Restrictions, Encroachments, Minerals—Owner’s Policy—Improved Land[\*](#co_footnote_I86058291d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 9.2 (Restrictions, Encroachments, Minerals - Owner’s Policy - Improved Land) |
|  | Adopted 06/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

a. Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land that violate any building setback lines shown on a [**plat**](http://practicallawconnect.thomsonreuters.com/Document/Id615f8c7b8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of subdivision recorded or filed in the Public Records.

b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a [**right of first refusal**](http://practicallawconnect.thomsonreuters.com/Document/I0fa0349bef0811e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.

c. Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.

d. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.

e. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Damage to existing buildings

a. That are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;

b. Resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

3. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.

4. Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.a. and 4, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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2 Title Ins. Law Appendix AA-10 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I860c1240d6ee11ea8f41e1f6f2a)**

APPENDIX AA-10. ALTA Endorsement 10–06 Assignment[\*](#co_footnote_I860c3950d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 10 (Assignment) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

*Blank Title Insurance Company*

1. The name of the Insured is amended to read:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. The failure of the following assignment to vest title to the Insured Mortgage in the Insured:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

This endorsement shall be effective provided that the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Insured at Date of Endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date of Endorsement:\_\_\_\_\_\_\_\_

[Witness clause optional]

*Blank Title Insurance Company*

\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix AA-10.1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

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**Appendices****[\*](#co_footnote_I8612c900d6ee11ea8f41e1f6f2a)**

APPENDIX AA-10.1. ALTA Endorsement 10.1–06 Assignment & Date Down[\*](#co_footnote_I8612c901d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 10.1 Assignment & Date Down) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

*Blank Title Insurance Company*

1. The name of the Insured is amended to read:\_\_\_\_\_\_\_\_\_\_\_.

a. The failure of the following assignment to vest title to the Insured Mortgage in the Insured:\_\_\_\_\_\_\_\_\_\_\_;

b. Any liens for taxes or assessments that are due and payable on Date of Endorsement, except:\_\_\_\_\_\_\_\_\_\_\_;

c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the title to the estate or interest in the Land and recorded subsequent to the Date of Policy in the Public Records and on or prior to Date of Endorsement except:\_\_\_\_\_\_\_\_\_\_\_;

e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:\_\_\_\_\_\_\_\_\_\_\_;

2. The Company insures against loss or damage sustained by the Insured by reason of

a. The failure of the following assignment to vest title to the Insured Mortgage in the Insured:\_\_\_\_\_\_\_\_\_\_\_;

b. Any liens for taxes or assessments that are due and payable on Date or Endorsement, except:\_\_\_\_\_;

c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to Date of Policy in the Public Records and on or prior to Date of Endorsement, except:\_\_\_\_\_\_\_\_\_\_\_;

e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:\_\_\_\_\_\_\_\_\_\_\_.

This endorsement shall be effective provided that the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Insured at Date of Endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date of Endorsement:\_\_\_\_\_\_\_\_\_\_\_

[Witness clause optional]

Blank Title Insurance Company

Authorized Signatory

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2 Title Ins. Law Appendix AA-11 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I861b2d70d6ee11ea8f41e1f6f2a)**

APPENDIX AA-11. ALTA Endorsement 11–06 Mortgage Modification[\*](#co_footnote_I861b2d71d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 11 (Mortgage Modification) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

*Blank Title Insurance Company*

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at Date of Endorsement as a result of the agreement dated \_\_\_\_\_\_\_\_\_\_\_, recorded \_\_\_\_\_\_\_\_\_\_\_ (”Modification”); and

2. The lack of priority of the lien of the Insured Mortgage, at Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: [Specify exceptions, if any]

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys’ fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws that is based on:

1. the Modification being deemed a [**fraudulent conveyance**](http://practicallawconnect.thomsonreuters.com/Document/Ibb09e990ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or fraudulent transfer; or

2. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure

a. to timely record the instrument of transfer; or

b. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date of Endorsement:\_\_\_\_\_\_\_\_

[Witness clause optional]

*Blank Title Insurance Company*

By:

*Authorized Signature*

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2 Title Ins. Law Appendix AA-12 (2020 ed.)

**Title Insurance Law** | August 2020 Update

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**Appendices****[\*](#co_footnote_I86219610d6ee11ea8f41e1f6f2a)**

APPENDIX AA-12. ALTA Endorsement 12–06 Aggregation Endorsement[\*](#co_footnote_I8622f5a0d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement 12 (Aggregation Endorsement |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_\_\_\_\_\_\_

Issued By

*Blank Title Insurance Company*

The following policies are issued in conjunction with one another:

|  |  |  |  |
| --- | --- | --- | --- |
| POLICY NUMBER: | COUNTY: | STATE: | AMOUNT: |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Notwithstanding the provisions of Section 8(a)(i) of the Conditions of this policy, the Amount of Insurance available to cover the Company’s liability for loss or damage under this policy at the time of payment of loss hereunder shall be the aggregate of the Amount of Insurance under this policy and the other policies identified above. At no time shall the Amount of Insurance under this policy and the other policies identified above exceed in the aggregate *$*\_\_\_\_\_\_\_\_\_\_\_*.* Subject to the provisions of Section 10(a) of the Conditions of the policies, all payments made by the Company under this policy or any of the other policies identified above, except the payments made for costs, attorney’s fees, and expenses, shall reduce the aggregate Amount of Insurance by the amount of the payment.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date:\_\_\_\_\_\_\_\_\_\_\_

[Witness clause optional]

Blank Title Insurance Company

\_\_\_\_\_\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix AA-13 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8629fa80d6ee11ea8f41e1f6f2a)**

APPENDIX AA-13. ALTA Endorsement 13–06 Leasehold Owner’s[\*](#co_footnote_I862a2190d6ee11ea8f41e1f6f2a)

ENDORSEMENT

Attached to Policy No.

Issued By

*Blank Title Insurance Company*

1. As used in this endorsement, these terms shall mean the following:

a. ”Evicted” or “Eviction”: (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

b. ”Lease”: the lease agreement described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

c. ”Leasehold Estate”: the right of possession for the Lease Term.

d. ”Lease Term”: the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. ”Personal Property”: chattels located on the Land and property which, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.

f. ”Remaining Lease Term”: the portion of the Lease Term remaining after the Insured has been Evicted as a result of a matter covered by this policy.

g. ”Tenant Leasehold Improvements”: Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured’s expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement

If the Insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title.

a. The reasonable cost of removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d.The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction

f. Reasonable costs incurred by the Insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

*Blank Title Insurance Company*

By:

*Authorized Signature*

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2 Title Ins. Law Appendix AA-13.1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I863237e0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-13.1. ALTA Endorsement 13.1–06 Leasehold Loan[\*](#co_footnote_I863237e1d6ee11ea8f41e1f6f2a)

ENDORSEMENT

Attached to Policy No.

Issued By

*Blank Title Insurance Company*

1. As used in this endorsement, these terms shall mean the following:

a. ”Evicted” or “Eviction”: (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.

b. ”Lease”: the lease agreement described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

c. ”Leasehold Estate”: the right of possession for the Lease Term.

d. ”Lease Term”: the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. ”Personal Property”: chattels located on the Land and property that, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.

f. ”Remaining Lease Term”: the portion of the Lease Term remaining after the Insured has been Evicted as a result of a matter covered by this policy.

g. ”Tenant”: the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this policy, the Insured Claimant.

h. ”Tenant Leasehold Improvements”: Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured’s expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this policy and thereafter is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title.

a. The reasonable cost of removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

b.Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction

f. Reasonable costs incurred by the Insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

*Blank Title Insurance Company*

By:

*Authorized Signature*

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2 Title Ins. Law Appendix AA-14 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86387970d6ee11ea8f41e1f6f2a)**

APPENDIX AA-14. ALTA Endorsement 14–06 Future Advance—Priority[\*](#co_footnote_I8639b1f0d6ee11ea8f41e1f6f2a)

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 & 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.

a. ”Agreement,” as used in this endorsement, shall mean the note or loan agreement secured by the Insured Mortgage.

b. ”Advances,” as used in this endorsement, shall mean only those advances of principal indebtedness made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

b. The priority of any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) over the lien of the Insured Mortgage as security for each Advance.

c. The invalidity or unenforceability or loss of priority of the lien of the Insured Mortgage as security for the Indebtedness and Advances resulting from (i) re-Advances and repayments of Indebtedness, (ii) lack of outstanding Indebtedness before an Advance, or (iii) the failure of the Insured Mortgage to comply with the requirements of state law of the state in which the Land is located to secure Advances.

3. The Company also insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.

b. Loss of priority of the lien of the Insured Mortgage as security for the Indebtedness, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

”Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage at Date of Policy.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:

a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.

b. The loss of priority of the lien of the Insured Mortgage, as security for Advances, to the lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy.

c.The loss of priority of the lien of the Insured Mortgage as security for any Advance, to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration of more than forty-five days after notice of a federal tax lien filed against the mortgagor.

d. The loss of priority of the lien of the Insured Mortgage as security for Advances to any federal or state environmental protection lien.

e. Usury, or any consumer credit protection or truth-in-lending law.

f. The loss of priority of the lien of the Insured Mortgage as security for any Advance to a mechanic’s or materialmen’s lien.

5. The Amount of Insurance shall include Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I863fa560d6ee11ea8f41e1f6f2a)**

APPENDIX AA-14.1. ALTA Endorsement 14.1-06 Future Advance—Knowledge[\*](#co_footnote_I863fcc70d6ee11ea8f41e1f6f2a)

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 & 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.

a. ”Agreement,” as used in this endorsement, shall mean the note or loan agreement secured by the Insured Mortgage.

b. ”Advances,” as used in this endorsement, shall mean only those advances of principal indebtedness made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

b. The priority of any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) over the lien of the Insured Mortgage as security for each Advance.

c. The invalidity or unenforceability or loss of priority of the lien of the Insured Mortgage as security for the Indebtedness and Advances resulting from (i) re-Advances and repayments of Indebtedness, (ii) lack of outstanding Indebtedness before an Advance, or (iii) the failure of the Insured Mortgage to comply with the requirements of state law of the state in which the Land is located to secure Advances.

3. The Company also insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.

b. Loss of priority of the lien of the Insured Mortgage as security for the Indebtedness, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

”Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage at Date of Policy.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:

a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.

b. The loss of priority of the lien of the Insured Mortgage, as security for Advances, to the lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy.

c.The loss of priority of the lien of the Insured Mortgage as security for any Advance, to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration of more than forty-five days after notice of a federal tax lien filed against the mortgagor.

d. The loss of priority of the lien of the Insured Mortgage as security for Advances to any federal or state environmental protection lien.

e. Usury, or any consumer credit protection or truth-in-lending law.

f. The loss of priority of the lien of the Insured Mortgage as security for any Advance to a mechanic’s or materialmen’s lien.

5. The Amount of Insurance shall include Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

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By:

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86476d90d6ee11ea8f41e1f6f2a)**

APPENDIX AA-14.2. ALTA Endorsement 14.2–06 Future Advance—Letter of Credit[\*](#co_footnote_I86476d91d6ee11ea8f41e1f6f2a)

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 of this endorsement is subject to the exclusions in Section 3 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.

a. ”Agreement,” as used in this endorsement, shall mean the letter of credit, surety agreement, or reimbursement agreement, the repayment of Advances under which are secured by the Insured Mortgage.

b. ”Advances,” as used in this endorsement, shall mean only those advances of principal indebtedness made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

b. The priority of any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) over the lien of the Insured Mortgage as security for each Advance.

c. The invalidity or unenforceability or loss of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances.

3. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:

a. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy, or

b. Any federal or state environmental protection lien.

 c.

[Any mechanic’s or materialmen’s lien.]

4. The Amount of Insurance shall include Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I864f0eb0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-14.3. ALTA Endorsement 14.3–06 Future Advance—Reverse Mortgage[\*](#co_footnote_I864f35c0d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 14.3 (Future Advance - Reverse Mortgage |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions in the policy, except Exclusion 3(d), the provisions of the Conditions and Stipulations and the Exceptions contained in Schedule B.

a. Agreement, as used in this endorsement, shall mean the note or loan agreement secured by the insured mortgage.

b. Advances, as used in this endorsement, shall mean only those advances of principal indebtedness made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the insured mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the insured mortgage before the time of acquisition of the estate or interest in the land, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

2. The Company insures against loss or damage sustained by the insured by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage as security for each Advance.

b. The lack of priority of the lien of the insured mortgage as security for each Advance over any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title.

c. The invalidity or unenforceability or loss of priority of the lien of the insured mortgage as security for the unpaid indebtedness and Advances resulting from (i) re-Advances and repayments of indebtedness, (ii) lack of outstanding indebtedness before an Advance, (iii) failure to comply with the requirements of state law to secure Advances, (iv) failure of the insured mortgage to state the term for Advances, or (v) failure of the insured mortgage to state the maximum amount secured by the insured mortgage.

d. The failure of the mortgagors to be at least 62 years of age at Date of Policy.

3. The Company also insures against loss or damage as a result of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the principal portion of the Indebtedness.

b. Loss of priority of the lien of the insured mortgage as security for the principal indebtedness, including any unpaid interest which was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the unpaid principal indebtedness resulting from the addition of unpaid interest.

Changes in the rate of interest, as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the insured mortgage at Date of Policy.

Interest, as used in this endorsement, shall include lawful additional interest based on net appreciated value.

4.This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys fees or expenses) resulting from:

a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.

b. The loss of priority of Advances to real estate taxes or assessments imposed on the land by governmental authority arising after Date of Policy.

c. The loss of priority to a federal tax lien of any Advance made more than forty-five days after a notice of federal tax lien has been filed in the public records.

d. The loss of priority of Advances to any federal or state environmental protection lien.

e. Usury, or any consumer credit protection or truth-in-lending law.

f. [The loss of priority of an Advance to a mechanics or materialmens lien.]

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

*Blank Title Insurance Company*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix AA-15 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86563aa0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-15. ALTA Endorsement 15–06 Nonimputation—Full Equity Transfer[\*](#co_footnote_I865661b0d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement Form 15 (Nonimputation-Full Equity Transfer) |
|  | Adopted 6/17/06 |
|  | |

[Entity as the named insured and vestee of the insured estate or interest identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))]

ENDORSEMENT

Attached to Policy No.

Issued By

BLANK TITLE INSURANCE COMPANY

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify exiting or contributing partner(s) of the insured partnership entity, member(s) or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

imputed to the Insured by operation of law, provided

[identify the “incoming” partners, members, or shareholders]

acquired the Insured as a purchaser for value without Knowledge of the asserted defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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2 Title Ins. Law Appendix AA-15.1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I866296b0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-15.1. ALTA Endorsement 15.1–06 Nonimputation—Additional Insured[\*](#co_footnote_I8662bdc0d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement Form 15.1 (Nonimputation—Additional Insured) |
|  | Adopted 6/17/06 |
|  | |

[Entity as the named insured in the policy and vestee of the insured estate or interest identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink))]

ENDORSEMENT

Attached to Policy No.

Issued By

BLANK TITLE INSURANCE COMPANY

For purposes of the coverage provided by this endorsement,

[identify the “incoming” partner, member or shareholder]

(”Additional Insured”) is added as an Insured under the policy. By execution below, the Insured named in Schedule A acknowledges that any payment made under this endorsement shall reduce the Amount of Insurance as provided in Section 10 of the Conditions.

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify, as applicable, the existing and/or exiting partner(s) of the insured partnership entity, member(s) or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

imputed to the Additional Insured by operation of law, to the extent of the percentage interest in the Insured acquired by Additional Insured as a purchaser for value without Knowledge of the asserted defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

AGREED AND CONSENTED TO:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

INSURED

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

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2 Title Ins. Law Appendix AA-15.2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I866a85f0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-15.2. ALTA Endorsement 15.2–06 Nonimputation—Partial Equity Transfer[\*](#co_footnote_I866aad00d6ee11ea8f41e1f6f2a)

[Incoming partner, member, or shareholder, as the named insured in its own policy, where the vestee of the insured estate or interest identified in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) is a partnership, limited liability company, or corporation]

ENDORSEMENT

Attached to Policy No.

Issued By

BLANK TITLE INSURANCE COMPANY

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify, as applicable, the existing and/or exiting partner(s) of the vestee partnership entity, member(s) or manager(s) of the vestee limited liability company entity, or officer(s) and/or director(s) of the vestee corporate entity]

imputed to the entity identified in paragraph 3 of Schedule A or to the Insured by operation of law, but only to the extent that the Insured acquired the Insured’s interest in entity as a purchaser for value without Knowledge of the asserted defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

*[Witness clause optional]*

BLANK TITLE INSURANCE COMPANY

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2 Title Ins. Law Appendix AA-16 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86727530d6ee11ea8f41e1f6f2a)**

APPENDIX AA-16. ALTA Endorsement 16–06 Mezzanine Financing[\*](#co_footnote_I86727531d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 16 (Mezzanine Financing) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Mezzanine Lender is: \_\_\_\_\_\_\_\_ and each successor in ownership of its loan (”Mezzanine Loan”) reserving, however, all rights and defenses as to any successor that the Company would have had against the Mezzanine Lender, unless the successor acquired the Indebtedness as a purchaser for value without knowledge of the asserted defect, lien, [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), adverse claim, or other matter insured against by this policy as affecting Title.

2. The Insured

a. assigns, as additional collateral for the Mezzanine Loan, the right to receive any amount otherwise payable to the Insured under this policy to the Mezzanine Lender; and

b. agrees that in the event of loss under the Policy and the acquisition by Mezzanine Lender of any interest in the Insured, under a pledge of ownership interests, or any other document or instrument securing the Mezzanine Loan, the amount which the Company shall be liable to pay shall be paid without requiring the Mezzanine Lender to pursue its remedies against other collateral securing the Mezzanine Loan.

3. Having been so instructed by the Insured, the Company agrees that loss payable to the Insured for a claim under this policy will be paid directly to the Mezzanine Lender.

4. This agreement on the part of the Company does not impart any right to the Mezzanine Lender to participate in the negotiation or settlement with the Insured under this policy without the written consent of the Insured, nor does the Company waive any defenses that it may have against the Insured, except as expressly stated in this endorsement.

5. In the event of a loss under the policy, the Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), (c), or (e) to refuse payment to the Mezzanine Lender solely by reason of the action or inaction or knowledge, as of Date of Policy, of the Insured, provided

a. the Mezzanine Lender had no actual knowledge of the defect, lien, encumbrance or other matter creating or causing loss on Date of Policy.

b. this limitation on the application of Exclusions from Coverage 3(a), (b), (c), and (e) shall

i. apply whether or not the Mezzanine Lender has acquired an interest in the Insured either on or after Date of Policy, and

ii. benefit the Mezzanine Lender only without benefiting any other individual or entity that holds an interest (direct or indirect) in the Insured or the Land.

6. In the event of a loss under the Policy, the Company also agrees that it will not deny liability to the Mezzanine Lender on the ground that any or all of the ownership interests in the Insured have been transferred to or acquired by the Mezzanine Lender directly or indirectly, either on or after the Date of Policy.

7. The Mezzanine Lender acknowledges

a. that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is hereafter executed by an Insured and which is a charge or lien on the estate or interest described or referred to in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), and the amount so paid shall be deemed a payment under this policy; and

b. that the Company shall have the right to insure mortgages or other conveyances of an interest in the Land, without the consent of the Mezzanine Lender.

8. If the Insured, the Mezzanine Lender or others have conflicting claims to all or part of the loss payable under the Policy, the Company may interplead the amount of the loss into Court. The Insured and the Mezzanine Lender shall be jointly and severally liable for the Company’s cost for the interpleader and subsequent proceedings, including attorneys’ fees. The Company shall be entitled to payment of the sums for which the Insured and Mezzanine Lender are liable under the preceding sentence from the funds deposited into Court, and it may apply to the Court for their payment.

9. This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

AGREED AND CONSENTED TO:

*(Insert name of Insured)*

*(Insert name of Mezzanine Lender)*

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8678ddd0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-17. ALTA Endorsement 17–06 Access and Entry[\*](#co_footnote_I867904e0d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 17 (Access and Entry) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the “Street”), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Appendices****[\*](#co_footnote_I867fe2b0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-17.1. ALTA Endorsement 17.1–06 Indirect Access and Entry[\*](#co_footnote_I868009c0d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 17.1-06 (Indirect Access and Entry) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

*BLANK TITLE INSURANCE COMPANY*

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the easement identified [as Parcel \_\_\_\_\_\_\_\_\_\_\_] in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) (the “Easement”) does not provide that portion of the Land identified [as Parcel \_\_\_\_\_\_\_\_\_\_\_] in Schedule A both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the “Street”), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

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BY: \_\_\_\_\_\_\_\_\_\_\_

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**Appendices****[\*](#co_footnote_I8685d620d6ee11ea8f41e1f6f2a)**

APPENDIX AA-18. ALTA Endorsement 18–06 Single Tax Parcel[\*](#co_footnote_I8685fd30d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 18.-06 (Single Tax Parcell) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Appendices****[\*](#co_footnote_I868b7b70d6ee11ea8f41e1f6f2a)**

APPENDIX AA-18.1. ALTA Endorsement 18.1–06 Multiple Tax Parcel[\*](#co_footnote_I868b7b71d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 18.1-06 (Multiple Tax Parcel) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel:

Tax Identification Numbers:

2. the easements, if any, described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) being cut off or disturbed by the nonpayment of real estate taxes assessed against the [**servient estate**](http://practicallawconnect.thomsonreuters.com/Document/Ifce9ff0a7d6811e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Appendices****[\*](#co_footnote_I8691bd00d6ee11ea8f41e1f6f2a)**

APPENDIX AA-18.3. Single Tax Parcel and ID Endorsement

|  |  |
| --- | --- |
| APPENDIX AA-18.3 |  |
| ALTA Endorsement 18.3[-06] Single Tax Parcel and ID[\*](#co_footnote_I8691bd01d6ee11ea8f41e1f6f2a) | Adopted 12-01-2018 |

[**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 18.3[-06] SINGLE TAX PARCEL AND ID ENDORSEMENT

This endorsement is issued as part of

Policy Number \_\_\_\_\_

issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes; or

2. any portion of the Land not being assessed for real estate taxes under tax identification number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

*[Witness clause optional]*

*[DATE]*

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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**Appendices****[\*](#co_footnote_I8699fa60d6ee11ea8f41e1f6f2a)**

APPENDIX AA-19. ALTA Endorsement 19–06 Contiguity Multiple Parcels[\*](#co_footnote_I8699fa61d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 19-06 (Contiguity-Multiple Parcels) |
|  | Adopted 6/17/06 |
|  | |

[For use when multiple separate parcels make up the Land]

Attached to Policy No.

BLANK TITLE INSURANCE COMPANY

ENDORSEMENT

Issued By

The Company insures against loss or damage sustained by the Insured by reason of:

1. the failure [of the \_\_\_\_\_\_\_\_\_\_\_ boundary line of Parcel A] of the Land to be contiguous to [the \_\_\_\_\_\_\_\_\_\_\_ boundary line of Parcel B] ; or

[For more than two parcels, continue as follows: “; of [the \_\_\_\_\_\_\_\_\_\_\_ boundary line of Parcel B] of the Land to be contiguous to [the \_\_\_\_\_\_\_\_\_\_\_ boundary line of Parcel C] and so on until all contiguous parcels described in the policy have been accounted for.]

2. the presence of any gaps, strips, or gores separating any of the contiguous boundary lines described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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APPENDIX AA-19.1. ALTA Endorsement 19.1-06 Contiguity Single Parcel[\*](#co_footnote_I86a37041d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 19-06 (Contiguity-Single Parcel) |
|  | Adopted 6/17/06 |
|  | |

[For use when the insured desires contiguity coverage between the Land and some other parcel of land]

ENDORSEMENT

Attached to Policy No.

Issued By

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. the failure of the Land to be contiguous to [describe the land that is contiguous to the Land by its legal description or by reference to a recorded instrument - e.g. “. . . that certain parcel of real property legally described in the deed recorded as Instrument No. , records of County, State of ] along the \_\_\_\_\_\_ boundary line[s]; or

2. the presence of any gaps, strips or gores separating the contiguous boundary lines described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

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APPENDIX AA-20. ALTA Endorsement 20–06 First Loss—Multiple Parcel Transactions[\*](#co_footnote_I86ace620d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 20-06 (First Loss-Multiple Parcel Transactions) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

This endorsement is effective only if the Collateral includes at least two parcels of real property.

1. For the purposes of this endorsement

a. “Collateral” means all property, including the Land, given as security for the Indebtedness.

b. “Material Impairment Amount” means the amount by which any matter covered by this policy for which a claim is made diminishes the value of the Collateral below the Indebtedness.

2. In the event of a claim resulting from a matter insured against by this policy, the Company agrees to pay that portion of the Material Impairment Amount that does not exceed the limits of liability imposed by Sections 2 and 8 of the Conditions without requiring

a. [**maturity**](http://practicallawconnect.thomsonreuters.com/Document/Ibb0a13a7ef0511e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of the Indebtedness by acceleration or otherwise,

b. pursuit by the Insured of its remedies against the Collateral,

c. pursuit by the Insured of its remedies under any guaranty, bond or other insurance policy.

3. Nothing in this endorsement shall impair the Company’s right of subrogation. However, the Company agrees that its right of subrogation shall be subordinate to the rights and remedies of the Insured. The Company’s right of subrogation shall include the right to recover the amount paid to the Insured pursuant to paragraph 2 from any debtor or guarantor of the Indebtedness, after payment or other satisfaction of the remainder of the Indebtedness and other obligations secured by the lien of the Insured Mortgage. The Company shall have the right to recoup from the Insured Claimant any amount received by it in excess of the Indebtedness up to the amount of the payment under paragraph 2.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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**Appendices****[\*](#co_footnote_I86b5e6d0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-21. ALTA Endorsement 21–06 Creditors’ Rights[\*](#co_footnote_I86b60de0d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement 21-06 (Creditors’ Rights) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the avoidance in whole or in part, or a court order providing some other remedy, based on the voidability of any estate, interest, or Insured Mortgage because of the occurrence on or before Date of Policy of a fraudulent transfer or a preference under federal bankruptcy, state insolvency, or similar creditors’ rights laws.

The coverage provided by this endorsement shall include the payment of costs, attorneys’s fees, and expenses necessary to defend the Insured against those counts, and no others, of any litigation seeking a court order which will result in loss or damage against which this endorsement provides insurance to the extent provided in the Conditions.

This endorsement does not insure against loss or damage if the Insured (a) knew when it acquired any estate, interest, or Insured Mortgage that the transfer, conveyance, or Insured Mortgage was intended to hinder, delay, or defraud any creditor, or (b) is found by a court not to be a transferee or purchaser in good faith.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:\_\_\_\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix AA-22 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86bc0150d6ee11ea8f41e1f6f2a)**

APPENDIX AA-22. ALTA Endorsement 22–06 Location[\*](#co_footnote_I86bc0151d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 22-06 (Location) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the insured by reason of the failure of a *(description of improvement)* known as (street address), to be located on the land at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

*Blank Title Insurance Company*

By:

*Authorized Signature*

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86c79a10d6ee11ea8f41e1f6f2a)**

APPENDIX AA-22.1. ALTA Endorsement 22.1–06 Location & Map[\*](#co_footnote_I86c7c120d6ee11ea8f41e1f6f2a)

|  |  |
| --- | --- |
| American Land Title Association | Endorsement 22.1-06 (Location & Map) |
|  | Adopted 6/17/06 |
|  | |

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the insured by reason of the failure of (i) a *(description of improvement)* known as *(street address)*, to be located on the land at Date of Policy, or (ii) the map, if any, attached to this policy to correctly show the location and dimensions of the land according to the public records.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

*Blank Title Insurance Company*

By:

*Authorized Signature*

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**Title Insurance Law** | August 2020 Update

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**Appendices****[\*](#co_footnote_I86d13700d6ee11ea8f41e1f6f2a)**

APPENDIX AA-32. ALTA Endorsement 32-06 (Construction Loan)

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| APPENDIX AA-32 |  |
| ALTA Endorsement 32-06 (Construction Loan) | Adopted 02-03-2011 |
|  | Technical Correction 12-01-2018 |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.

2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. “Date of Coverage”, is [\_\_\_\_\_\_\_\_\_\_\_] *[Date of Policy]* unless the Company sets a different Date of Coverage by an [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 33-06 Disbursement Endorsement issued at the discretion of the Company.

b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

c. “Mechanic’s Lien,” shall mean any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic’s Lien, if notice of the Mechanic’s Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic’s Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) by reason of any Mechanic’s Lien arising from services, labor, material or equipment:

a. furnished after Date of Coverage; or

b. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

*[Witness clause optional]*

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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**Title Insurance Law** | August 2020 Update

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**Appendices****[\*](#co_footnote_I86dbe560d6ee11ea8f41e1f6f2a)**

APPENDIX AA-32.1. ALTA Endorsement 32.1-06 Construction Loan—Direct Payment

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| APPENDIX AA-32.1 |  |
| ALTA Endorsement 32.1-06 | Construction Loan—Direct Payment |
|  | Revised 04-02-2013 |
|  | Technical Correction 12-01-2018 |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.

2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. “Date of Coverage”, is [\_\_\_\_\_\_\_\_\_\_\_] *[Date of Policy]* unless the Company sets a different Date of Coverage by an [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 33-06 Disbursement Endorsement issued at the discretion of the Company.

b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

c. “Mechanic’s Lien,” shall mean any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic’s Lien if notice of the Mechanic’s Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic’s Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic’s Lien is claimed has been made by the Company or by the Insured with the Company’s written approval.

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) by reason of any Mechanic’s Lien arising from services, labor, material or equipment:

a. furnished after Date of Coverage; or

b. to the extent that the Mechanic’s Lien claimant was not directly paid by the Company or by the Insured with the Company’s written approval.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

*[Witness clause optional]*

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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**Title Insurance Law** | August 2020 Update

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**Appendices****[\*](#co_footnote_I86e6e1e0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-32.2. ALTA Endorsement 32.2-06 Construction Loan—Insured’s Direct Payment

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| --- | --- |
| APPENDIX AA-32.2 |  |
| ALTA Endorsement 32.2-06 | Construction Loan—Insured’s Direct Payment |
|  | Adopted 08-01-2012; Revised 04-02-2013 |
|  | Technical Correction 12-01-2018 |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.

2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. “Date of Coverage,” is [\_\_\_\_\_\_\_\_\_\_\_] *[Date of Policy]* unless the Company sets a different Date of Coverage by an [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) 33-06 Disbursement Endorsement issued at the discretion of the Company.

b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

c. “Mechanic’s Lien,” shall mean any [**statutory lien**](http://practicallawconnect.thomsonreuters.com/Document/I3a9a0dcbef1211e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic’s Lien, if notice of the Mechanic’s Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic’s Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic’s Lien is claimed has been made by the Insured or on the Insured’s behalf on or before Date of Coverage.

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) by reason of any Mechanic’s Lien arising from services, labor, materials or equipment:

a. Furnished after Date of Coverage; or

b. To the extent that the Mechanic’s Lien claimant was not directly paid by the Insured or on the Insured’s behalf.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

*[Witness clause optional]*

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I86f93160d6ee11ea8f41e1f6f2a)**

APPENDIX AA-36. Endorsement 36-06 (Energy Project—Leasehold/Easement—Owner’s) Adopted 04-02-12[\*](#co_footnote_I86f93161d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 36-06 (Energy Project—Leasehold/Easement—Owner’s) |
|  | Adopted 04-02-12 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Constituent Parcel” means one of the parcels of Land described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that together constitute one integrated project.

b. “Easement” means each easement described in Schedule A.

c. “Easement Interest” means the right of use granted in the Easement for the Easement Term.

d. “Easement Term” means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.

e. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a [**substation**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf199cf3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); a transmission, distribution or collector line; an [**interconnection**](http://practicallawconnect.thomsonreuters.com/Document/Id168f708ef2911e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, [**wheeling**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf197af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

f. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.

g. “Lease” means each lease described in Schedule A.

h. “Leasehold Estate” means the right of possession granted in the Lease for the Lease Term.

i. “Lease Term” means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

j. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated \_\_\_, last revised \_\_\_\_\_, designated as (*insert name of project or project number*) consisting of \_\_\_sheets.

k. “Remaining Term” means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.

l. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured’s rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured’s interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys’ fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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| **Footnotes** | |
| [\*](#co_fnRef_I86f93160d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix AA-36.1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I870ae4a0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-36.1. Endorsement 36.1-06 (Energy Project—Leasehold/Easement—Loan) Adopted 04-02-12[\*](#co_footnote_I870b0bb0d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 36.1-06 (Energy Project—Leasehold/Easement—Loan) |
|  | Adopted 04-02-12 |
|  | |

ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Constituent Parcel” means one of the parcels of Land described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that together constitute one integrated project.

b. “Easement” means each easement described in Schedule A.

c. “Easement Interest” means the right of use granted in the Easement for the Easement Term.

d. “Easement Term” means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.

e. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a [**substation**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf199cf3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); a transmission, distribution or collector line; an [**interconnection**](http://practicallawconnect.thomsonreuters.com/Document/Id168f708ef2911e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, [**wheeling**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf197af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

f. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.

g. “Lease” means each lease described in Schedule A.

h. “Leasehold Estate” means the right of possession granted in the Lease for the Lease Term.

i. “Lease Term” means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

j. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated \_\_\_, last revised \_\_\_\_\_, designated as (*insert name of project or project number*) consisting of \_\_\_sheets.

k. “Remaining Term” means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.

l. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

m. “Tenant” means the tenant under the Lease or a grantee under the Easement, as applicable, and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured’s rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured’s interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys’ fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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| **Footnotes** | |
| [\*](#co_fnRef_I870ae4a0d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix AA-36.2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I8714f6c0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-36.2. Endorsement 36.2-06 (Energy Project—Leasehold—Owner’s) Adopted 04-02-12[\*](#co_footnote_I87151dd0d6ee11ea8f41e1f6f2a)

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| --- | --- |
| American Land Title Association | Endorsement 36.2-06 (Energy Project—Leasehold—Owner’s) |
|  | Adopted 04-02-12 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Constituent Parcel” means one of the parcels of Land described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that together constitute one integrated project.

b. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a [**substation**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf199cf3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); a transmission, distribution or collector line; an [**interconnection**](http://practicallawconnect.thomsonreuters.com/Document/Id168f708ef2911e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, [**wheeling**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf197af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

d. “Lease” means each lease described in Schedule A.

e. “Leasehold Estate” means the right of possession granted in the Lease for the Lease Term.

f. “Lease Term” means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

g. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated \_\_\_, last revised \_\_\_\_\_, designated as (*insert name of project or project number*) consisting of \_\_\_sheets.

h. “Remaining Term” means the portion of the Lease Term remaining after the Insured has been Evicted.

i. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured’s rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured’s interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys’ fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent or damages that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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| **Footnotes** | |
| [\*](#co_fnRef_I8714f6c0d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix AA-36.3 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I87228b50d6ee11ea8f41e1f6f2a)**

APPENDIX AA-36.3. Endorsement 36.3-06 (Energy Project—Leasehold—Loan) Adopted 04-02-12[\*](#co_footnote_I8722b260d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 36.3-06 (Energy Project—Leasehold—Loan) |
|  | Adopted 04-02-12 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Constituent Parcel” means one of the parcels of Land described in [**Schedule A**](http://practicallawconnect.thomsonreuters.com/Document/I503a0f1e8d2711e38578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) that together constitute one integrated project.

b. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a [**substation**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf199cf3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); a transmission, distribution or collector line; an [**interconnection**](http://practicallawconnect.thomsonreuters.com/Document/Id168f708ef2911e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, [**wheeling**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf197af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

d. “Lease” means each lease described in Schedule A.

e. “Leasehold Estate” means the right of possession granted in the Lease for the Lease Term.

f. “Lease Term” means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

g. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated \_\_\_, last revised \_\_\_\_\_, designated as (*insert name of project or project number*) consisting of \_\_\_sheets.

h. “Remaining Term” means the portion of the Lease Term remaining after the Insured has been Evicted.

i. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

j. “Tenant” means the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured’s rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured’s interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys’ fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or [**encumbrance**](http://practicallawconnect.thomsonreuters.com/Document/I28ea4be0f0a511e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent or damages that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

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By: \_\_\_\_\_\_\_\_\_\_\_

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| [\*](#co_fnRef_I87228b50d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix AA-36.4 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I872aa1a0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-36.4. Endorsement 36.4-06 (Energy Project—Covenants, Conditions and Restrictions—Land Under Development—Owner’s) Adopted 04-02-12[\*](#co_footnote_I872bda20d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 36.4-06 (Energy Project—Covenants, Conditions and Restrictions—Land Under Development—Owner’s) |
|  | Adopted 04-02-12 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Covenant” means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

b. “Electricity Facility” means an electricity generating facility that may include one or more of the following: a [**substation**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf199cf3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); a transmission, distribution or collector line; an [**interconnection**](http://practicallawconnect.thomsonreuters.com/Document/Id168f708ef2911e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, [**wheeling**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf197af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated \_\_\_, last revised \_\_\_\_\_, designated as (*insert name of project or project number*) consisting of \_\_\_sheets.

d. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;

b. Enforced removal of any Electricity Facility or Severable Improvement as a result of a violation of a building setback line shown on a [**plat**](http://practicallawconnect.thomsonreuters.com/Document/Id615f8c7b8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or

c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:

a. any Covenant contained in an instrument creating a lease or easement;

b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

c. except as provided in Section 3.c., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

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By: \_\_\_\_\_\_\_\_\_\_\_

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| [\*](#co_fnRef_I872aa1a0d6ee11ea8f41e1f6f2aa78) | The author thanks the [**American Land Title Association**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) [ALTA] for permission to print its standard title insurance policies and endorsement forms.  ALTA revised its 1992 Owners and Loan [**title insurance policy**](http://practicallawconnect.thomsonreuters.com/Document/I8d74c4f2ef2a11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) forms in June 2006. ALTA also revised its standard endorsements to conform to the new definitions and section numbering in the 2006 policies. The 1992 policy forms and associated endorsements will remain ALTA “certified” until 6/17/07. The 2006 endorsement forms must be used with the 2006 policies, and *vise versa*, so it is necessary to read the adoption date on each. |
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2 Title Ins. Law Appendix AA-36.5 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I873269d0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-36.5. Endorsement 36.5-06 (Energy Project—Covenants, Conditions and Restrictions—Land Under Development—Loan) Adopted 04-02-12[\*](#co_footnote_I8733a250d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 36.5-06 (Energy Project—Covenants, Conditions and Restrictions—Land Under Development—Loan) |
|  | Adopted 04-02-12 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Covenant” means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

b. “Electricity Facility” means an electricity generating facility that may include one or more of the following: a [**substation**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf199cf3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); a transmission, distribution or collector line; an [**interconnection**](http://practicallawconnect.thomsonreuters.com/Document/Id168f708ef2911e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, [**wheeling**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf197af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated \_\_\_, last revised \_\_\_\_\_, designated as (*insert name of project or project number*) consisting of \_\_\_sheets.

d. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. A violation of a Covenant that:

i. divests, subordinates, or extinguishes the lien of the Insured Mortgage;

ii. results in the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage; or

iii. causes a loss of the Insured’s Title acquired in satisfaction or partial satisfaction of the Indebtedness.

b. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;

c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of a violation of a building setback line shown on a [**plat**](http://practicallawconnect.thomsonreuters.com/Document/Id615f8c7b8e211e398db8b09b4f043e0/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or

d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:

a. any Covenant contained in an instrument creating a lease or easement;

b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

c. except as provided in Section 3.d., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_

Authorized Signatory

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2 Title Ins. Law Appendix AA-36.6 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I873a0af0d6ee11ea8f41e1f6f2a)**

APPENDIX AA-36.6. Endorsement 36.6-06 (Energy Project—Encroachments) Adopted 04-02-12[\*](#co_footnote_I873b4370d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement 36.6-06 (Energy Project—Encroachments) |
|  | Adopted 04-02-12 |
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ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Electricity Facility” means an electricity generating facility that may include one or more of the following: a [**substation**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf199cf3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)); a transmission, distribution or collector line; an [**interconnection**](http://practicallawconnect.thomsonreuters.com/Document/Id168f708ef2911e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, [**wheeling**](http://practicallawconnect.thomsonreuters.com/Document/Id4cf197af3ad11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)), sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

b. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated \_\_\_, last revised \_\_\_\_\_, designated as (*insert name of project or project number*) consisting of \_\_\_sheets.

c. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. An encroachment of any Electricity Facility or Severable Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;

b. An encroachment of an improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;

c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of an encroachment by the Electricity Facility or Severable Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Electricity Facility or Severable Improvement; [or]

d. Damage to any Electricity Facility or Severable Improvement that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved [; or]

[e. The coverage of Sections 3.c. and 3.d. shall not apply to the encroachments listed in Exception(s) \_\_\_\_\_ of Schedule B].

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from contamination, explosion, fire, vibration, fracturing, earthquake or subsidence.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix JR-1 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I87415df0d6ee11ea8f41e1f6f2a)**

APPENDIX JR-1. Endorsement JR 1 (October 19, 1996)[\*](#co_footnote_I87418500d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement JR 1 |
|  | Adopted 10/17/92 |
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**ENDORSEMENT**

**Attached to Policy No. \_\_\_\_\_**

**Issued By**

**BLANK TITLE INSURANCE COMPANY**

A. The Company hereby insures against loss or damage sustained by the insured resulting from:

1. Any document recorded in the public records subsequent to Date of Policy and on or prior to Date of Endorsement which purports to vest title to the fee estate in the land, except:

2. Any monetary lien other than the insured’s mortgage shown in paragraph B below, recorded in the public records subsequent to Date of Policy and on or prior to Date of Endorsement which affects the title except:

B. The insured’s mortgage referred to in the policy is described as follows:

C. If the box is checked, [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Endorsement Form JR 2 is incorporated herein: □

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

DATE OF ENDORSEMENT: \_\_\_\_\_

*[Date of Endorsement is the date shown*

*above or the date of recording of the*

*insured’s mortgage, whichever is later.]*

BLANK TITLE INSURANCE COMPANY

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2 Title Ins. Law Appendix JR-2 (2020 ed.)

**Title Insurance Law** | August 2020 Update

Joyce Palomar

**Appendices****[\*](#co_footnote_I874889e0d6ee11ea8f41e1f6f2a)**

APPENDIX JR-2. Endorsement JR 2 (Revolving Credit/Variable Rate) (October 19, 1996)[\*](#co_footnote_I874889e1d6ee11ea8f41e1f6f2a)

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| American Land Title Association | Endorsement JR 2 (Revolving Credit/Variable Rate) |
|  | Adopted 10/19/96 |
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**ENDORSEMENT**

**Attached to Policy No. \_\_\_\_\_**

**Issued By**

**BLANK TITLE INSURANCE COMPANY**

I. Provided that:

A. The land is a one-to-four family residence or condominium unit; and

B. The insured’s mortgage creates a lien on the land; and

C. The borrower named in the insured’s mortgage. (”Borrower”) is the owner of the land at the date an advance is made pursuant to the note or agreement secured by the insured’s mortgage referred to above; and

D. With respect to paragraph A below the insured’s mortgage states that it secures repayment of future advances, and

E. The [**ALTA**](http://practicallawconnect.thomsonreuters.com/Document/I77ec3da9ef2e11e28578f7ccc38dcbee/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) Endorsement JR 2 has been issued,

II. The Company hereby insures against loss or damage which the insured shall sustain by reason of:

A. The failure of the lien for future advances secured by the insured’s mortgage to have the same priority over liens, encumbrances, and other matters disclosed by the public records as advances secured by the insured’s mortgage at the date of its recording, except for the following matters:

1. Ad Valorem taxes or assessments;

2. Federal tax liens;

3. Environmental protection liens;

4. Liens, encumbrances, or other matters, the existence of which are actually known to the insured prior to the date of an advance; or

5. Liens imposed by law for services, labor or materials.

B. The invalidity or unenforceability of the lien of the insured’s mortgage resulting from the provisions of the insured’s mortgage which provide for changes in the rate of interest.

C. Loss of priority of the lien of the insured’s mortgage resulting from changes in the rate of interest calculated in accordance with the formula provided in the insured’s mortgage at the date it is recorded in the public records.

III. This Endorsement does not insure:

A. That the Borrower owns the land nor that the insured’s mortgage creates a lien on the land, nor the validity, enforceability, or priority of the lien of the insured’s mortgage, except to the extent expressly stated; nor

B. Against loss or damage resulting from (1) usury, (2) any consumer credit protection or truth in lending law, or (3) bankruptcy or insolvency proceedings of the Borrower.

This endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior endorsements. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the effective date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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