



# CHICAGO BULL

EDITION 28 (REVISED NOV 2003)

## Closing Protection Letters in North Carolina: The New Procedure

Effective October 1, 2003, the North Carolina Department of Insurance has approved changes in form, procedure and cost of obtaining closing protection for North Carolina closings. (See attached announcement of the North Carolina Land Title Association.) By amended filing, effective November 3, 2003, notice shall be given that closing services insurance has or has not been provided. Chicago Title will assume that closing protection is desired on each transaction unless we are notified otherwise.

### Why the change?

The modern real estate closing has become increasingly complex with more documents, more requirements, more parties, more variance among lender demands, more deadlines and less time to prepare than in the past. With this added pressure, comes the added risk of errors and losses, especially closing protection losses. Losses solely due to closing protection liability have escalated at an alarming rate to become a major source of losses for title companies.

### What are closing protection losses as compared to traditional title coverage losses?

Historically, the attorney's certification of title would be the basis for requirements in a title insurance commitment. If the requirements were met, the policy would be issued as reflected by the commitment. If the requirements were not met, either additional exceptions would be taken in the policy or the policy would not be issued at all. "Closing protection" losses are the result of noncompliance with written closing instructions, some of which are *not title-related*, such as failure to deliver within specified deadlines:

- Clear well or septic tank report;
- Required lien priority status;
- Post-closing requirements;
- The closing package to the appropriate office of the lender; or
- The final lender title insurance policy and required endorsements.

*Title* coverage rates have been designed to provide adequate assurance of coverage of risks from *title* losses. This increase in *closing* losses was never included in a calculation of title rates. These losses are a product of the changes in closing process, documentation and time pressures.

### What does this mean for the closing attorney and the client?

- (1) The approved form of Closing Protection Letter, specific to an identified attorney, borrower and lender, will be issued by complying companies. (Copy attached)
- (2) When closing services insurance is provided, a combined closing and title risk rate premium, a single undivided charge pursuant to N.C.Gen.Stat. §58-26-1(d), will be applicable. The closing services insurance portion of the premium shall be calculated as follows:

<b>Coverage</b>	<b>Per Thousand or Fraction thereof</b>
Up to \$100,000 of liability	\$0.50
\$100,001 to \$500,000, add	\$0.10

### How do you find out more?

More specific information about the Rating Bureau and about the revised procedure is available on the web site of the North Carolina Department of Insurance – Industry -- Property and Casualty Insurance -- View Company Rate and Form Filings under the "North Carolina Title Insurance Rating Bureau" at:

Forms filing PC064747: <http://infoportal.ncdoi.net/filingdetail.jsp?fid=354848>

Rate filing PC064748: <http://infoportal.ncdoi.net/filingdetail.jsp?fid=354849>

And, of course, as always, feel free to contact your preferred office or agent of  
Chicago Title Insurance Company  
Ticor Title Insurance Company  
Security Union Title Insurance Company

We invite you to view this and previous Chicago Bulls at  
**WWW.NORTHCAROLINA.CTT.COM**



## NORTH CAROLINA LAND TITLE ASSOCIATION

September 4, 2003

### MEMORANDUM

**TO:** Members of NCLTA

**FROM:** NCLTA Executive Committee

**DATE:** September 2, 2003

**RE:** Insured Closing Premiums

Please be advised that the North Carolina Title Insurance Rating Bureau has filed, and the NC Department of Insurance has approved, a premium for insured closing protection. The Rating Bureau is charged with the task of setting appropriate rates for risks covered, to assure the financial responsibility of industry members, and it is obvious that no charge for insured closing protection is not appropriate for the risk incurred. Therefore, **a charge of \$.50 per thousand from \$0.00 to \$100,000.00 and \$.10 per thousand from \$100,001.00 to \$500,000.00 shall be effective as of October 1, 2003.** The combination of premiums for title insurance and insured closing services shall be *one undivided charge* pursuant to N.C.G.S. § 58-26-1(d).

This action is consistent with the provisions of the Model Title Insurance Act which was sponsored by the National Association of Insurance Commissioners and provides for a charge for insured closing protection. That group recognized closing protection as a significant risk category for which the insurer must be compensated.

Members should note that the charge for closing protection is a premium and subject to the regulation of the Department of Insurance including sanctions for intentional deviation from filed rates.

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***Chicago Title Insurance Company***  
***[Address]***

***Telephone: (000) 000-0000***

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**CLOSING PROTECTION LETTER**

September 6, 2003

ATTENTION: JOHN SMITH  
SAMPLE LENDER  
123 WEST STREET  
GREENVILLE, NC 23456-8765

Re: Borrower(s): BILLY BOB BUYER  
Loan #: 2345-930187  
Approved Attorney: SAMPLE ATTORNEY  
1234 SAMPLE LANE  
SAMPLE, NC 43256-9876

Dear Sir or Madam:

When title insurance of Chicago Title Insurance Company is specified for your protection in connection with closings of North Carolina real estate transactions in which you are to be the lessee or purchaser of an interest in land or a lender secured by a mortgage (including any other security instrument) of an interest in land in accordance with N.C. Gen. Stat. Sec. 58-26-1, the Company, subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with such closings when conducted by an Issuing Agent (an agent authorized to issue title insurance for the Company) or an Approved Attorney (an attorney upon whose certification of title the Company issues title insurance) and when such loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursements of funds necessary to establish such 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 such other document affects the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, or
2. Fraud or dishonesty of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with such closings to the extent such fraud or dishonesty relates to the status of the title to said interest in land or to the validity, enforceability, and priority of the lien of said mortgage on said interest in land.

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

**Conditions and Exclusions**

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

2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such 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.
  3. Mechanics' and materialmen's liens in connection with your purchase or lease or construction loan transactions, except to the extent that a title insurance binder, commitment or policy of the Company affords protection against such liens.
  4. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent such instructions require a determination by the Issuing Agent or Approved Attorney of the validity, enforceability or effectiveness of any document contemplated under paragraph 1(b) above.
- B. If the closing is to be conducted by an Issuing Agent or 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 Issuing Agent or Approved Attorney.
- C. When the Company shall have reimbursed you pursuant to the coverage contained in this letter, it shall be subrogated to all rights and remedies, which you would have had against any person or property, had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
- D. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent or Approved Attorney shall be limited to the coverage provided. However, this coverage shall not affect the protection afforded by a title insurance binder, commitment or other policy of the Company.
- E. Claims shall be made promptly to the Company at its principal office at 171 North Clark Street, Chicago, Illinois 60601. When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of such prejudice. The Company shall not be liable hereunder unless the Company receives notice of claim in writing within three years from the date of the Closing.
- F. The coverage herein offered extends only to real property transactions in North Carolina.

The coverage herein offered will be effective upon your disbursement of funds to the Issuing Agent or Approved Attorney identified above after you receive this letter and will continue until canceled by written notice from the Company.

Any previous Closing Protection Letter or similar agreement is hereby canceled, except as to closings of your real estate transactions regarding which you have previously sent (or within 30 days hereafter send) written closing instructions to the Issuing Agent or Approved Attorney.

Chicago Title Insurance Company

By:                     S A M P L E                      
                     Authorized Agent

Re: Borrower(s): BILLY BOB BUYER