

REDLINE OF 04-02-2021 V.02.00 AGAINST 12-01-2018 REVISION WITH 08-01-2019 TECHNICAL CORRECTION

**ALTA CLOSING PROTECTION LETTER
MULTIPLE TRANSACTIONS
issued by
BLANK TITLE INSURANCE COMPANY**

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“Addressee”:

“Date”:

“Issuing Agent” or “Approved Attorney”:

[Issuing Office:

Issuing Office’s ALTA® 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 the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to

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51 the Land.

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CONDITIONS AND EXCLUSIONS

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56 1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate
57 Transaction constitutes Your acceptance of this letter.

58

59 2. For purposes of this letter:

60 a. "Commitment" means the Company's written contractual agreement to issue the Policy.

61 b. "Funds" means the money received by the Issuing Agent or Approved Attorney for the Real
62 Estate Transaction.

63 c. "Policy" means the contract or contracts of title insurance, each in a form adopted by the
64 American Land Title Association, issued or to be issued by the Company in connection with
65 the closing of the Real Estate Transaction.

66 d. "You" or "Your" means:

67 i. the Addressee of this letter;

68 ii. the borrower, if the Land is improved solely by a one-to-four family residence; and

69 iii. subject to all rights and defenses relating to a claim under this letter that the
70 Company would have against the Addressee,

71 (a). the assignee of the Insured Mortgage, provided such assignment was for
72 value and the assignee was, at the time of the assignment, without
73 Knowledge of facts that reveal a claim under this letter; and

74 (b). the warehouse lender in connection with the Insured Mortgage.

75 e. "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the
76 same meaning given them in the American Land Title Association Loan Policy.

77

78 3. The Company ~~shall have no liability~~ **is not liable** under this letter for any loss arising from any:

79 a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that
80 require title insurance protection in connection with the Real Estate Transaction inconsistent
81 with that set forth in the Commitment. Your written closing instructions received and accepted
82 by the Issuing Agent or Approved Attorney after issuing the Commitment that require the
83 removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions
84 from Coverage or compliance with the requirements contained in the Commitment ~~shall~~ **will** not
85 be deemed to require inconsistent title insurance protection;

86 b. loss or impairment of Funds in the course of collection or while on deposit with a bank due to
87 bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the
88 Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit
89 Your Funds in a bank that You designated by name;

90 c. constitutional or statutory lien or claim of lien that arises from services, labor, materials, or
91 equipment, if any Funds are to be used for the purpose of construction, alteration, or
92 renovation. ~~This Section Condition and Exclusion 3-(c)~~ does not ~~affect the~~ **modify or limit Your**
93 coverage, if any, as to any lien for services, labor, materials, or equipment ~~afforded~~ in the
94 Policy;

95 d. defect, lien, encumbrance, ~~adverse claim~~, or other matter in connection with the Real Estate
96 Transaction. ~~This Section Condition and Exclusion 3-(d)~~ does not ~~affect the~~ **modify or limit Your**
97 coverage ~~afforded~~ in the Policy;

98 e. fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent,
99 attorney, or broker;

100 f. fraud, theft, dishonesty, or misappropriation by anyone other than the Company, Issuing Agent,

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- 101 or Approved Attorney;
- 102 g. settlement or release of any claim by You without the Company's written consent;
- 103 h. matters created, suffered, assumed, agreed to, or Known by You;
- 104 i. failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the
- 105 effectiveness of a document required by Your closing instructions. ~~This Section Condition and~~
- 106 ~~Exclusion 3-(i).~~ does not ~~affect the modify or limit Your~~ coverage ~~afforded~~ in the Policy;
- 107 ~~Federal~~
- 108 j. ~~Any law regulating trade, lending, credit, sale, and debt collection practices involving~~
- 109 ~~consumers; any~~ consumer financial law, ~~as defined in 12 U.S.C. § 5481(14), actions under 12~~
- 110 ~~U.S.C. § 5531;~~ or ~~any~~ other ~~federal or state laws~~ law relating to truth-in-lending, ~~predatory~~
- 111 ~~lending, or~~ a borrower's ability to repay a loan, ~~qualified mortgages, consumer protection, or~~
- 112 ~~predatory lending~~, including any failure of the Issuing Agent or Approved Attorney to comply
- 113 with Your closing instructions relating to those laws;
- 114 k. federal or state laws establishing the standards or requirements for asset-backed securitization
- 115 including, but not limited to, exemption from credit risk retention, including any failure of the
- 116 Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those
- 117 laws;
- 118 l. periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land;
- 119 m. Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or
- 120 facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal
- 121 Revenue Code; or
- 122 n. wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer,
- 123 network, email, or document production system, business email compromise, identity theft, or
- 124 diversion of Funds to a person or account not entitled to receive the Funds ~~perpetrated by~~
- 125 ~~anyone other than.~~ Condition and Exclusion 3.n. does not modify or limit:
- 126 i. Your coverage in the Company Policy; or
- 127 ii. indemnification in this letter for Your loss solely caused by fraud, theft, dishonesty, or
- 128 misappropriation by the Issuing Agent, or Approved Attorney, in handling Your Funds or
- 129 documents in connection with the closing, but only to the extent that the fraud, theft,
- 130 dishonesty, or misappropriation adversely affects the status of the Title to the Land or
- 131 the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to
- 132 the Land.
- 133
- 134 4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real
- 135 Estate Transaction must have been received by You prior to the transmittal of Your final closing
- 136 instructions to the Approved Attorney.
- 137
- 138 5. When the Company ~~shall have indemnified~~ indemnifies You pursuant to this letter, it ~~shall be is~~
- 139 subrogated to all rights and remedies You have against any person, entity, or property had You not
- 140 been indemnified. The Company's liability for indemnification ~~shall be is~~ reduced to the extent that
- 141 You have impaired the value of this ~~right of~~ subrogation. right.
- 142
- 143 6. The Company's liability for loss under this letter ~~shall does~~ not exceed the least of:
- 144 a. the amount of Your Funds;
- 145 b. the Company's liability under the Policy at the time written notice of a claim is made under this
- 146 letter;
- 147 c. the value of the lien of the Insured Mortgage;
- 148 d. the value of the Title to the Land insured or to be insured under the Policy at the time written
- 149 notice of a claim is made under this letter; or
- 150 e. the amount stated in Section Requirement 3 of the Requirements.

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7. The Company ~~will be~~ is liable only to the ~~holder~~owner of the Indebtedness at the time that payment is made. ~~This Section~~Condition and Exclusion 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~~reduces liability under this letter by the same amount. Payment in accordance with the terms of this letter ~~shall constitute~~constitutes 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~~is not liable 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~~The Company ~~be~~ is not 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~~Condition and Exclusion 10 ~~shall~~will 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~~ is reduced to the extent of the prejudice.
 12. ~~Whenever~~When requested by the Company, You, at the Company's expense, ~~shall~~must:
 - 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 ~~or desirable~~ to enable the Company's investigation and determination of its liability under this letter;
 - b. deliver to the Company ~~any~~all 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~~is not liable under this letter if:
 - a. the Real Estate Transaction has not closed within one year from the ~~date~~Date of this letter; or
 - b. at any time after the ~~date~~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~~must apply the law of ~~the jurisdiction where the Land is located~~that state to interpret and enforce the terms of this letter. ~~In neither case shall the~~The court or arbitrator ~~must not~~ 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~~

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201 jurisdiction.

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203 **15.** There ~~shall be~~ is no right for any claim under this letter to be arbitrated or litigated on a class action
204 basis.
205

206 **[16.** Either the Company or You may demand that any claim arising under this letter be submitted to
207 arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association,
208 unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than
209 \$2,000,000. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater
210 than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed
211 to by both the Company and You. **[If the Real Estate Transaction solely involves a one-to-four family
212 residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.]]**
213

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215 This letter supersedes and cancels any previous letter or similar agreement for closing protection that
216 applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.
217

218 **BLANK TITLE INSURANCE COMPANY**

219
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221
222 **By:** _____
223 **[Authorized Signatory]**
224

225 *(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing*
226 *Agent or Approved Attorney contained in this letter and the words “Underwritten Title Company” may be*
227 *inserted in lieu of Issuing Agent.)*

