

December 14, 1992

SUBJECT: INSURANCE

Circular Letter No. 18 (1992)

December 14, 1992

TO: ALL AUTHORIZED TITLE INSURERS IN NEW YORK STATE

RE: CLOSING PROTECTION LETTERS TO LENDERS FROM TITLE INSURERS

It appears that closing protection letters (CPL) have been typically requested by lenders, and then issued by title insurers, at closings in this State. Under the CPL, the title insurer purports in effect to indemnify the lender (mortgagee) in the event of losses caused by any improper acts or omissions, not by the title insurer's agent, but by the lender's attorney in connection with the underlying real property transaction. Generally, a CPL deals with failure to comply with instructions as well as fraud or dishonesty in the collection and payment of funds due to or advanced by the lender. As such, the CPL is in the nature of fidelity or surety coverage, or resembles professional liability insurance against legal malpractice on the part of the lender's attorney.

As a rule, title insurers lack authority to issue a CPL to a lender insofar as that lender's attorney is concerned, because its purported protection falls beyond the scope of the monoline title insurer's license and writing authority that is exclusively confined to Section 1113(a)(18) of the Insurance Law. Thus a CPL that attempts to address acts or omissions on the part of the lender's attorney is unauthorized, would give lenders no solace in the past, and should no longer be issued (whether on an individual closing or blanket basis) by New York licensed title insurers. Even in the unusual situation where the title insurer's approved attorney and the lender's designated attorney happen to be one and the same, it is unclear what a CPL purports to do beyond the title insurance policy itself. Insofar as it diverges from the title insurance policy, a CPL would constitute an unauthorized act.

Consequently, under no circumstances should a title insurer licensed in this State issue closing protection letters in the future with respect to New York real property transactions. Any blanket CPL issued in the past should be rescinded as to future transactions. A title insurer is not precluded, however, 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.

Written acknowledgement of this Circular Letter should be sent no later than January 8, 1993 to the attention of Daniel J. Sheridan, Senior Insurance Examiner, Property & Casualty Insurance Bureau, at the above address, specifically indicating, pursuant to Section 308 of the Insurance Law, the numbers of CPLs (individual closing and blanket basis) issued to date and any CPL-related losses thus far incurred or paid. Please direct any questions concerning this Circular Letter to Mr. Sheridan (212-602-8725).

Very truly yours,

[SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE