CHICAGO TITLE | Know before you close.

Closing Protection Letters & Insurance Policy Comparisons

Important Differences Between Different Types Of Common Insurance Polices and Protections

What is covered:

- Closing Protection Letters
- Errors & Omission Insurance
- “Fidelity” or “Crime” Insurance Policies

It is important to understand the differences between different types of insurance polices and protections. The following provides a general description between several terms that are often used, but some misunderstood.

Closing Protection Letter

Title insurance underwriters issue commitments and policies both through direct title operations and through title insurance agents. The title insurance underwriter/agent relationship is a limited agency relationship wherein the agent is only granted the authority to act on behalf of the title insurance underwriter for the purpose of issuing title insurance commitments or policies. Although both title insurance underwriters and title agents perform closing and escrow functions, those closing and escrow activities are outside the scope of the limited scope of title insurance underwriter’s agency contract and relationship with the policy issuing agent. Given the limited scope of the title insurance underwriter/agent relationship the title insurer has no responsibility or liability for closing and escrow activities of a title agent. By contrast, when a direct title operation or employee of a title insurance underwriter performs closing or escrow functions the underwriter is liable for those acts because those are the direct acts of the title insurance underwriter and its employees. The closing protection letter is offered to address lender concerns over the security of funds and documents handled by a title agent that is issuing the title insurer’s policy in a particular transaction by indemnifying against actual loss if the policy issuing agent does not followed the lender’s written closing instructions regarding the disbursement of funds and documents.

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The closing protection letter is an agreement to indemnify the lender for actual losses incurred by the lender caused by specific closing and escrow related actions or inactions of the title agent. The closing protection letter is not an insurance contract. The title underwriter's indemnification obligation is subject to the conditions and exclusion to indemnification stated in the body of the letter.

Subject to state law variations, the closing protection letter indemnifies against actual loss caused by failure of the named issuing agent to comply with the written closing instructions of the addressee/lender to the extent those closing instructions relate to:

- The status of title to the land or the validity, enforceability and priority of the lien of the mortgage, including the obtaining of documents and the disbursement of funds necessary to establish title or the lien; or
- Fraud, dishonesty or negligence of the issuing agent in handling the addressee's transactional funds or documents to the extent such fraud, dishonesty or negligence relates to the status of the title or the validity, enforceability and priority of the lien of the mortgage.

Errors & Omissions Insurance

E&O insurance covers the liability of the named Insured service provider to others for damages resulting from the wrongful acts (most typically negligence) of that Insured service Provider in the rendering of, or failing to render, its professional services. E&O insurance carriers do not provide Additional Insured status to the clients of the Insured service provider. The benefit of the E&O policy to the lender is to assure a source of funding for the liability of the Insured service provider in the event of the proven negligence by the Insured service provider. E&O policies exclude liability for matters that are covered by other insurance policies or other contracts of indemnity, such as closing protection letters.

"Crime" Insurance Policies

"Crime" is a first-party policy which indemnifies the Insured service provider for its direct loss of money or other property caused by the intentionally fraudulent acts of one or more of its employees, or an employee in collusion with others. The covered property which is lost or misused by the intentionally fraudulent acts of the employee must be (i) owned by the Insured, (ii) held by the insured or (iii) property of others for which the Insured is legally liable (this last is sometimes referred to as "Client Coverage" and is a relatively recent development).

Crime policies also exclude losses that are covered by other insurance policies or contracts of indemnity. Crime insurance carriers do not provide Additional Insured status to the clients of the Insured service provider. The benefit of this insurance to the lender is to assure a source of funding for the liability of the Insured service provider in the event of a covered occurrence.

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