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Dear Chairman Scripps,

The following is a brief overview of the role that Title Insurance Underwriter's play in the process of insuring property transactions. Title Insurance Underwriters enter into contracts with Agents [Agency Agreements] for the issuance of title commitments and policies on the Underwriter's paper. The Agent Agreement primarily establishes a relationship between the Agent and Underwriter for purposes of issuing commitments and policies. The Agent will often close the sale or refinance transaction in conjunction with the issuance of the title work and provide settlement/escrow services to facilitate the closing. Settlement services are the independent action and activity of the Agent and are not contemplated as a part of the Agency Agreement. Historically, however, the lending industry (banks, credit unions, mortgage lenders, etc...) has historically required the issuance of a Closing Protection Letter from the Underwriter which provides the lender some assurances in the event the Agent fails to close pursuant to the lenders closing instructions or for Agent fraud. The American Land Title Association (ALTA) has promulgated form letters for this purpose and they are used nationally by all Underwriters. These form letters are furnished to lenders upon request. The assurances provided by the CPL's do not create strict liability for the Underwriter for *any and all acts* of the Agent but for those matters specifically contained in the ALTA CPL's. Generally speaking, the assurances provided by the Underwriter are for:

- failure of the Agent to comply with written closing instructions to the extent they relate to the status of title
- failure to obtain documentation required by the lender to the extent it affects the status of title
- fraud, dishonesty or negligence of the Agent in handling lender funds or documents to the extent it relates to the status of title

This coverage is then conditioned by various provisions.

The legislation being proposed by OFIR is to expand the issuance of the CPL's to the other parties in the transaction (buyer and seller) as well as the lender. The Underwriters have no fundamental objection to such a proposal, but it is imperative that the industry be able to assist in the crafting of the language of the proposed Bill to make sure the language does not improperly burden the industry to the point Underwriters would no longer be able employ the use of Agents in the State for the issuance of its title products. We perceive that there are various provisions of the proposed language that need modification and we stand ready as an industry to help facilitate this process.

Sincerely,

Doug Smith

Cc: House Banking and Financial Services Members