



CLOSING PROTECTION LETTERS AND SUB-ESCROW IN WASHINGTON STATE

Closing Protection Letters (CPL's) are often misunderstood and misused

Many lenders, (not all) as a condition to funding a loan to a closing agent or attorney, require agreements called “closing protection letters” or “insured closing agreements”, where the Title Company agrees to protect the lender against specific losses in the event the closing agent fails to carry out the lender’s written closing instructions, or commits fraud.

- Any escrow agent must have **errors and omission insurance** which provides protection against fraudulent or dishonest acts as well as unintentional errors and omissions.
- The lender’s title insurance **policy will insure that the lender has an enforceable and valid lien on the property.** A CPL is not insurance.

- CPL’s have **been around since the 1960’s** but have recently resurfaced due in part to our current economic conditions and changes in lending practices, requirements and regulations.
- CPL’s are issued in most states but some states restrict, limit or even prohibit their use. According to RCW 48.05.330 (Washington State law), **CPL’s may only be issued when a title insurance company or its issuing agent is handling the closing.**
- A “sub-escrow” may be needed if an attorney, outside escrow agent or another title company’s escrow department is handling the closing.
- CPL’s provide **specific assurance to the lender which will safeguard and indemnify them in the event that dishonesty, fraud, or negligence** causes an escrow agent to fail to properly disburse the escrow funds.

A CPL also provides assurance to the lender that **the lender’s written closing instructions have been complied with.**

If a lender requires a CPL and we are both the Title Company AND the closing Escrow Agent, it is issued internally at **no charge.**

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IF WE ARE NOT CLOSING YOUR
ESCROW..... AND WE ARE ISSUING
TITLE INSURANCE FOR YOU.....

Often a lender will request a CPL when the closing is being handled by an independent escrow company or attorney versus the underwriter or us, its issuing agent. In these cases **the CPL can only be issued after a sub-escrow is opened and the underwriter or its agent has been instructed to accept lender loan funds**, collect title premiums, sub-escrow fees, payoff all liens that appear in the preliminary title commitment and forward the balance of funds to the outside closing agent . A CPL does NOT protect against acts of the outside party, so our sub-escrow agent must take control of the escrow disbursements.

The sub-escrow does not normally include ordering payoff demands or the disbursement of funds to persons other than the escrow holder and others for the purpose of eliminating matters affecting title to the insured property.

When will you know a lender will require a sub-escrow?

Often times very close to the closing date. A sub-escrow is opened when the borrower's lender requires their new loan funds be wired directly to the title company and that title company will pay off all underlying liens. **In states where title insurance and escrow are always with the same company sub-escrows are a non-issue.**

In states like Washington, title insurance and escrow may be “split” between two separate companies. This is not to say that each time title and escrow is with different companies a sub-escrow is required, it is requested as a requirement of the borrower's lender.

Sub-escrow fees are hard to predict due to the amount of work involved. We have seen them range between \$80 to \$400. The low \$80 fee usually has many add-on charges for mailing payoffs, processing fees, wire fees, etc. Pacific Northwest Title quotes a flat all-inclusive fee. **We suggest you quote a \$250 plus tax sub-escrow fee if you have a “split title and escrow”.** It is better than a surprise charge for the borrower that can throw a GFE out of compliance.

When a sub-escrow is required on a **short sale**, this may cause a challenge as the short sale lender must approve the HUD-1 Settlement Statement (which should disclose the sub-escrow fee) prior to closing. The timing becomes a challenge as the short sale lender may have already approved the HUD-1 statement before the new lender is requiring a sub-escrow.

Talk to our escrow staff members if you have questions about CPLs, sub-escrows or any other matter concerning your escrow transaction.