



FIDELITY NATIONAL TITLE GROUP

CHICAGO TITLE INSURANCE COMPANY (CTI)
COMMONWEALTH LAND TITLE INSURANCE COMPANY (CLT)
FIDELITY NATIONAL TITLE INSURANCE COMPANY (FNT)

UNDERWRITING BULLETIN



Settlement Charges

Supplementing FNTG U.B. Nos. 82 (Feb. 10, 2015) & 83 (Mar. 6, 2015)

I. Overview. Earlier this year, the New Jersey Land Title Insurance Rating Bureau ["NJLTIRB"] received approval of the Department of Banking & Insurance ["DOBI"] for certain changes to the *Rate Manual* concerning settlement charges. These changes became effective on **April 1, 2015**.

II. Summary of Changes. As noted in **FNTG U. B. No. 82**, §1.9 (definition of "Settlement Charge") has been amended to reflect a revision in the explanation of the term **settlement**, which now includes "closing- or settlement-related functions performed both before and after the occurrence of the closing or settlement itself". However, no **settlement charge** may be imposed for those functions covered by *Rate Manual* §7.1 ("Service Charges"). In addition, §3.1.5(c) ("Right to Impose Special Charges") has been revised to conform to the definition of **Settlement Charge** in §1.9).

A. Settlements with Disbursements. Section **6.1** ("Settlements with Disbursements") has been revised to set the initial settlement length, for which the minimum settlement charge of **\$300.00** (for settlements held at the agent's office during normal business hours) is imposed, at **60** (formerly 90) **minutes**. And §**6.2.3** ("Settlements of Greater than Normal Length") is revised to provide that when a settlement with disbursements exceeds 60 minutes in length, an additional charge of **\$100.00** (formerly \$25.00) is imposed for each additional hour (or fraction thereof) in excess of the initial 60-minute period. Pursuant to Art. 6 of the *Rate Manual*, where settlement services are provided, the charges for same are not optional, but mandatory.

B. Settlements without Disbursements. Section §**6.3** ("Settlements without Disbursements") is revised to set the initial settlement length, for which the minimum settlement charge of **\$150.00** is imposed, at **60** (formerly 90) **minutes**. Section **6.4.3** ("Settlements of Greater than Normal Length") is revised to provide that when a settlement without disbursements exceeds 60 minutes in length, an additional charge of **\$50.00** (formerly \$25.00) is imposed for each additional hour (or fraction thereof) in excess of the initial 60-minute period. As noted above, settlement charges are not optional, but rather mandatory.

C. Itemization of Charges. Section **6.4.4** ("Settlements of Greater than Normal Length; Itemization of Charges") provides that whenever a settlement (with or without disbursements) of greater than normal length occurs, the insurer or agent must provide the applicant (upon request) with an itemization of the time expended. The same must include settlement-related functions performed both pre-and post-settlement. It is therefore recommended that you keep records of the time spent on settlement-related activities for each file in the event an itemization of charges is requested.

D. Post-Closing Activities. Although not addressed by the foregoing example, it is helpful to remember that **post-closing** settlement-related functions which are covered by *Rate Manual* §7.1 ("Service Charges") may **not** be included as part of the settlement charge. So let us assume that after the hypothetical settlement discussed above, the agent spent an additional hour arranging for the satisfaction of a mortgage. The agent may **not** add another \$100.00 to the settlement charge by characterizing that

activity as a post-settlement function under §6.2.3. Rather, the agent should charge \$75.00 for this activity in accordance with §7.1(b).

E. Special Rate or Charge. In addition, it should be noted that the additional charges imposed for pre- and post-settlement-related functions under *Rate Manual* §§ 6.2.3 and 6.4.3 are separate and distinct from those permitted under §3.1.5(c) (“Right to Impose Special Charges”). Therefore, returning to the example discussed in ¶ II.F below, the agent may not charge \$100.00 for pre-settlement-related functions under §6.2.3, and then charge an additional sum for the same activities under §3.1.5(c). Note also that whenever a special charge is imposed under §3.1.5, a form entitled ***Consent to Special Rate or Charge*** must be signed by the applicant in accordance with §3.1.5(d). The Consent to Special Rate or Charge form should not be used simply because the settlement fee includes charges for settlement-related activities imposed under *Rate Manual* §§ 6.2.3 and 6.4.3. The form is applicable only where the agent seeks to impose fees which are not covered by those sections. For more information, see FNTG U. B. No. 83.

F. Example. An example illustrating the operation of §6.2.3 has been added to the Appendix portion of the *Rate Manual*. In this hypothetical situation, an agent conducts a settlement with disbursements, which is held at the agent’s office during normal business hours. One hour is spent at the table preceded by one hour in preparation time. Thus, the settlement charge is **\$400**, computed as follows: **\$300** for the hour spent at the table (in accordance with §6.1) plus **\$100** for the hour spent in pre-settlement-related functions (in accordance with §6.2.3). As discussed above, settlement charges are not optional, but rather mandatory.

III. Recommended Practices. FNTG believes that it is important that its agents comply with the provisions of state and federal regulatory schemes, even in connection with matters such as settlement services, which fall outside the scope of their issuing agency contracts. As noted in ¶ II above, to the extent an agent provides settlement services, the charges for same are mandatory. Thus, as in the example given in ¶ II.F above, the agent is not only permitted, but also required, to charge \$100.00 for the hour spent in preparation for the settlement, so that a total charge of \$400.00 is imposed.

In determining which activities fall within the scope of “closing- or settlement-related functions” (and hence must be included as part of the settlement charge), it is helpful to bear in mind that activities which would normally be performed even in cases where no settlement services are provided (such as preparation of the title commitment) are excluded. On the other hand, those which are solely attributable to settlement services (such as preparation of the closing statement) are included. Post-settlement functions are also included, *provided* they do not fall within the scope of *Rate Manual* §7.1. As noted in ¶ II.C. above, it is recommended that you keep records of the time spent on settlement-related activities for each file.

In conclusion, you are reminded that rates, charges and forms are strictly regulated by DOBI under the provisions of the Title Insurance Act, and that contents of the *Rate Manual* and the *Forms Manual* have been approved by DOBI.

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File this bulletin in ***Handbook of N.J. Title Practice*** at the end of **Chapter 14**. Additional copies should be filed at the end of **Chapters 32** (“Closing of Title”) and **106** (“Settlement Services”). File the *Rate Manual* at the end of **Chapter 11**. Underwriting bulletins, whether local or national, should not be distributed to customers or others without the permission of this office.