

CLEAR ABSTRACT SERVICES NY, LLC

11 West Lincoln Ave.

Suite 500

Valley Stream, NY 11580

Phone: 631-245-7931

Email: fran@clearabstractservices.com

NO MORE TITLE CLOSERS?

To be clear, I write this in opposition to the newly proposed Insurance Regulation 208. Also, please understand that I write this, not to insult your professional intelligence, but to make the points plain and clear to legislators and/or regulators who may not have a good idea on the issues herein.

As you may already be aware, our esteemed governor has recently proposed, through Benjamin M. Lawsky, the Superintendent of Financial Services, new regulation on real estate transactions and on the Title Insurance industry specifically. This is known as Insurance Regulation 208. For the actual text of the proposed regulations, simply click the link below:

http://www.dfs.ny.gov/insurance/r_prop/rp208t.pdf

The intent of these regulations is to protect the consumer from being gouged by unscrupulous Title Insurers. To that end, their intention is a noble one. However, I believe that if the regulations were passed as is, there would be numerous unforeseen affects that would be detrimental to the consumer. I worry that the net results would be worse for the consumer than the problem they are trying to cure.

Regulation 208 addresses sundry issues. It would limit how a title company markets itself by calling specific marketing tactics as an "inducement" (a nice word for a kick back). It would regulate the costs of all the ancillary charges associated with a closing. There are many other proposed changes listed in the regulation, and to address all of them here would be tedious. So please allow me to address just one: **the Title Closer**

Insurance Regulation 208 says, in part, (Section 227.5 c)

Every title insurance corporation and title insurance agent shall prohibit its title insurance closers from accepting, in conjunction with the closing:

- (1) Any gratuity or additional payment by or on behalf of any insured in cash, check, or other form; or*
- (2) Any pick up fee*

To be clear, this proposed regulation would severely limit the compensation that Closers receive for the work they perform. The only premises I for this I can imagine is that out regulators don't know what a Title Closer does.

Title Closers are the experts who represent the Title Insurance Company at a closing. However, the work that they do directly benefits not only the Title Company, but also the buyer, seller and lender involved in each transaction, and the attorneys who represent them.

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A Title Closer is normally an independent contractor, as opposed to an employee of the Title Insurance company. To be a reasonably good closer requires in-depth knowledge of many technical aspects of the real estate transaction. I have personally overseen several bright young people trained as closers. It takes months of full time effort and training on their part to become a novice closer; one who could be trusted with only the simplest transactions. Most Closers will attend thousands of closings before they consider themselves an expert.

Here are a few areas where Title Closers need to develop expertise in order to fulfill their responsibilities:

Legal Documents and Recording Requirements:

Closers need to know legal documents. They need to be able to read a deed and know if it would effectively transfer ownership from the seller to the buyer. They need to know if the deed meets the recording requirements of the local municipality where the document will be submitted for public record. They need to know legal descriptions and specifically, if the description recited in a specific deed is sufficient. And that's just one document!

They need to know about Powers of Attorney. They need to know what the proper form is, how it is to be completed and executed. They also should know the older forms and the dates that they were statutorily effective. They need to know how to verify if the Power is still in effect and if the Attorney in Fact is authorized to sell the property on behalf of the Principal.

Closers also need to know a similar list of factors as they pertain to mortgages, assignment of mortgages, satisfaction of mortgages, general affidavits, specific affidavits and any other document that the transaction may call for.

Even though these documents are prepared by the various parties and their attorneys, a closer takes on the responsibility of making sure that they are prepared correctly, properly executed, and acceptable for recording. If there is a mistake made in any of these areas, the closer is normally the one who is responsible to follow through, doing whatever is necessary, until the situation is corrected.

Notary Responsibilities and Fraud Detection:

Every closer also has to be a Notary Public and understand what his or her responsibilities are when executing the duties of that office. Yes, closers are officers of the court. They will notarize the signatures of the sellers on the deed. The closer usually does not know them personally, so they will have to ask for identification. A good closer will be aware when the identification tendered is questionable and bring that issue to their superiors. Title closers are the last line of defense when it comes to fraud prevention.

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Tax Rates and Structures:

Closers need an in-depth knowledge of the mortgage tax and transfer tax structures and how to calculate the amount of taxes due on each transaction. I am curious, do you know how calculate the correct amount of mortgage tax that the borrower would pay on a loan of \$550,000.00 where the property is located in New York City and is improved by a 1 family dwelling? Sorry, but if you didn't ask if the lender is exempt from paying their quarter point, then your calculation would be incomplete. A Title Closer would know this. Experienced closers not only know how many mortgage tax rates there are, they also know what they are and when they apply. They need a similarly in-depth understanding of transfer taxes and all their variations, as well.

Mortgage Payoffs:

One of the least understood roles that a Closer plays at a closing is the Mortgage Payoff. The sellers in most transactions are usually selling property that is encumbered by a mortgage. It is the Title Closer who typically takes the responsibility of making sure this mortgage is paid off. This isn't something they do for the Title Companies they represent. This is a direct service provided to the seller, and it's a complicated one.

First, a Closer has to follow specific procedures in order to effectively verify the exact amount of money that must be paid in order to satisfy the mortgage. They need to know that the "lender" being paid off is holder of the mortgage of record, or a properly appointed servicing agent, as opposed to anyone else. Then they facilitate the transfer of those monies, usually HUNDREDS OF THOUSANDS OF DOLLARS, sometimes even more, in order to pay the mortgage off. The consequences of a failure to pay off the loan effectively, or even a delay in the payoff, results in liability to the title closer. For their services, the title closer charges a fee which is commonly referred to as a "pick up fee."

People Skills:

Besides all of the above mentioned technical duties, an effective title closer must have good people skills. They will know how to exercise discretion and bring resolution to some of the most bizarre situations that come up at a closing. Selling and buying a home can be a very emotional experience. I once had a transaction that almost did not close because the seller dug up and was transporting the fig tree from the back yard. The buyer took offense. Emotions got the better of many of the people at the table, but it was my title closer who was able to speak in such a way that the parties agreed to a solution.

Proposed Changes

The title closer does get paid for their services. Most experienced title closer that I know make between \$60,000 - \$80,000 a year. In New York, that is a livable income, but not a lot of money. They usually charge between \$200 and \$250 for a pick up fee, if there is a pick up. If the buyer's attorney appreciates the level of service and expertise that is exhibited by the title closer, they may give the closer a tip. A tip of \$100 is not unusual, but is never mandatory. The closer also submit a bill for their attendance to the title insurance company, usually around \$50.

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However, if Regulation 208 passes as written, it would prohibit the title closer from collecting a "pick up fee" and it would prohibit ANYONE from offering the closer a gratuity. Essentially, it will cut off the closer's main sources of income. What will happen if this takes place?

If the underlying issue is that someone thinks that title closers make too much money for too little work, I would respectfully disagree. How much would you expect someone that fulfills the duties I described above to earn?

These hard-working men and women are agreeing to be personally responsible for transmitting hundreds of thousands of dollars to assure the sellers mortgage is paid in full. When they do that, they are not acting on behalf of the Title companies who sent them. They are performing a service for the sellers or borrowers in each transaction. Does anyone really expect the closer to do all this for free? I don't think so.

Without a qualified title closer, who will be responsible for the mortgage pay off; perhaps one of the attorneys? Are they also going to indemnify the title insurance company against loss due to a faulty payoff? And if so, are they going to do that for free, or are they entitled to charge for their services like a proficient attorney would?

Should the title industry insist that a representative from the payoff bank attend the closing and tender a Satisfaction of Mortgage as they receive their check? And how much do you think the banks would charge for performing these services?

In my opinion, this regulation does not help the consumer at all. The tasks that a closer performs will all still need to be done. And if consumers are not able to pay closers to do them, they will simply end up paying someone else. This regulation will not protect consumers or save them money, but it will make it impossible for closers to continue making a living wage. I can't help but think that the loss of our title closers will prove detrimental to our industry.

Yes, there may be a few title closers who gouge consumers. But I believe that the laws that are already on the books, if they were enforced, would give adequate protection to the consumers that they were designed to protect.

Knowing these things and agreeing with them are simply not good enough.

If you do agree with them, I urge you to write to your legislators. Please, feel compelled to forward this to anyone that think could have any impact in helping our regulators understand the harm that these regulations would do.