

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
11 NYCRR 227
(INSURANCE REGULATION 208)**

TITLE INSURANCE RATES, EXPENSES AND CHARGES

I, Benjamin M. Lawskey, Superintendent of Financial Services, pursuant to the authority granted by Sections 202, 301, and 302 of the Financial Services Law and Sections 301, 2110, 2119, 2303, 2304, 2306, 2315, and 6409 and Articles 23 and 24 of the Insurance Law, do hereby promulgate a new Part 227 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation 208), to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

Section 227.0 Scope and purpose.

(a) The purpose of this Part is to promote the public welfare by proscribing practices that are not in accordance with Insurance Law section 2303, which provides that insurance rates shall not be excessive, inadequate, or unfairly discriminatory. This Part also interprets and implements Insurance Law section 6409(d), which prohibits giving any consideration or valuable thing as an inducement for title insurance business, as well as Insurance Law section 6409(e), which states that title insurance premiums shall reflect the anti-inducement prohibition of Insurance Law section 6409(d).

(b) This Part further protects consumers, pursuant to the authority of Insurance Law sections 2110 and 2119 and Article 24 and Financial Services Law sections 301 and 302, by ensuring that the title insurance industry provides valuable products and services to consumers at reasonable rates and fees and does not overcharge consumers or charge improper and excessive fees that constitute engaging in untrustworthy behavior and unfair and deceptive acts and practices.

Section 227.1 Definitions.

For purposes of this Part:

(a) *Affiliated third party* means an entity that controls, is controlled by, or is under common control with a title insurance corporation or title insurance agent.

(b) *Ancillary charge* means any fee for searches or services that is not included in the premium and that is not necessary for issuance of a title insurance policy, including Patriot, bankruptcy, and municipal or departmental searches, and recording charges.

(c) *Bankruptcy search* means a search of federal bankruptcy court filings to determine whether any seller or purchaser/borrower has filed a petition requesting bankruptcy protection.

(d) *Closing* means the closing of title of real property or the closing of a refinanced mortgage.

(e) *Current or prospective customer* means any applicant for insurance or any person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee, or the prospective owner, lessee, or mortgagee of the real property or any interest therein for which a title insurance policy is or may be issued.

(f) *Data call* means the annual request for data made, pursuant to Insurance Law section 2315, by a rate service organization or other agency designated by the superintendent as a statistical agent.

(g) *Escrow fee* means a fee paid at a closing to a title insurance corporation or title insurance agent to hold money in escrow for the purpose of paying judgments or encumbrances on the real property for which the title insurance policy is issued.

(h) *Gratuity* means any gift of money, including payments made at a closing by a purchaser to a title insurance closer other than for premium, ancillary charges, or any other closing charges reflected on the settlement statement or closing statement or invoice.

(i) *Municipal or departmental search* means a search of various municipal records to determine whether any violations or potential liens exist with regard to the real property for which the title insurance policy is issued.

(j) *Out-of-pocket cost* means the actual cost charged by a non-affiliated third party, excluding costs charged directly by a municipality to conduct a search.

(k) *Patriot search* means a search of the specially designated nationals list maintained by the United States Office of Foreign Assets Control to determine whether the name of any seller or purchaser/borrower is on such list.

(l) *Person* means any individual, partnership, corporation, association or any other entity.

(m) *Pick up fee* means any payment made at a closing for remitting a loan payoff to a lender.

(n) *Premium* means the rate charged for a title insurance policy.

(o) *Prohibited expenditure* means any expenditure that is not in accordance with Insurance Law article 23 or is prohibited under Insurance Law section 6409 or this Part.

(p) *Recording charge* means the charge by a county clerk, county register, or other governmental office for recording documents in connection with a transaction in which a title insurance policy is issued, including deeds, mortgages, satisfactions, powers of attorney, and Uniform Commercial Code forms.

(q) *Statistical agent* means a rate service organization licensed pursuant to Insurance Law section 2313 or other entity designated by the superintendent as a statistical agent pursuant to Insurance Law section 2315.

(r) *Title insurance agent* shall have the meaning set forth in Insurance Law section 2101(y).

(s) *Title insurance business* means activities described in Insurance Law section 6403(b).

(t) *Title insurance closer* means any person who, for compensation or anything of value, represents a title insurance corporation or title insurance agent at a closing.

(u) *Title insurance corporation* shall have the meaning set forth in Insurance Law section 6401(a).

(v) *Title insurance policy* shall have the meaning set forth in Insurance Law section 6401(b).

Section 227.2 Inducements.

Pursuant to Insurance Law section 6409(d), a title insurance corporation, title insurance agent, or any other person acting for or on behalf of the corporation or agent, including an employee or independent contractor, shall not offer or make, directly or indirectly, any rebate, or pay or give any consideration or valuable thing as an inducement for title insurance business. This prohibition shall include payment of any consideration or valuable thing targeted to current or prospective customers. Payment of any consideration or valuable thing as an inducement for title insurance business includes the following categories of expenditures:

(a) meals and beverages;

(b) entertainment, including tickets to sporting events, concerts, shows, or artistic performances;

(c) gifts, including cash, gift cards, gift certificates, or other items with a specific monetary face value;

(d) travel and outings, including vacations, holidays, golf, ski, fishing, and other sport outings, gambling trips, shopping trips, or trips to recreational areas, including country clubs;

(e) parties, including cocktail parties and holiday parties;

(f) open houses;

(g) continuing legal education or continuing education for which credits are provided for a reduced fee or no fee;

(h) sponsorships;

(i) advertising or marketing through any advertising or marketing medium;

(j) furniture, office supplies, telephones, telecommunications, computers and other electronic devices and business equipment, or automobiles, or leasing, renting, operating, or maintaining any of such items;

(k) use of a premises, unless a fair rental fee is charged that is equal to the market value in the premises' geographical area;

(l) paying the fees or charges of any professional representing an insured, such as an attorney, engineer, appraiser, or surveyor, or paying rent or all or any part of the salary or other compensation of any employee or officer of any current or prospective customer;

(m) charitable contributions; and

(n) political contributions.

Section 227.3 Expense reporting and rate filings.

(a)(1) No title insurance corporation or title insurance agent shall report any prohibited expenditure in response to a statistical agent's data call in expense schedules that report title expenses for underwriter direct operations, title expenses for underwriter subsidiary agents, underwriter title expenses for underwriting, claims, and agent remittance operations, and title revenue and expense for title insurance agents.

(2) Any expenditure made by a title insurance corporation or title insurance agent for categories of expense set forth in section 227.2 of this Part that is not a prohibited expenditure and is made for or to any person who is not an employee, officer, or director of the title insurance corporation or title insurance agent making such expenditure, shall be reported by the title insurance corporation or title insurance agent as separate line items in:

(i) supplemental expense schedules to the expense schedules submitted in response to the annual data call,

(ii) supplemental expense schedules included in the submissions by all title insurance corporations to the superintendent pursuant to subdivision (e) of this section, and

(iii) supplemental expense schedules in the annual statistical report submitted to the superintendent.

(b) No rate service organization or title insurance corporation that submits its own rate filing shall include, for rate setting purposes, any prohibited expenditures.

(c)(1) Every title insurance corporation and title insurance agent shall provide, in response to the annual data call, an affirmation that no expense schedule submitted in connection with the data call includes any prohibited expenditure. To the extent that any schedules submitted by any title insurance corporation in response to the annual data call for the most recent ten year period preceding the effective date of this Part include prohibited expenditures, such schedules shall be restated and re-submitted within 60 days of the effective date of this Part, in accordance with subdivisions (a) and (b) of this section.

(2) Every rate service organization or title insurance corporation that submits its own rate filing shall, within 90 days of the effective date of this Part, make a submission to the superintendent, which reflects the exclusion of prohibited expenditures, as restated in expense schedules submitted in accordance with paragraph (1) of this subdivision, supported by data and actuarial support. The submission shall include each individual title insurance corporation's restated expense schedules and verification that it does not include any prohibited expenditures.

(d)(1) Every title insurance corporation shall provide the annual agent data call to every title insurance agent that it has appointed to act as an agent in this State, with the exception of those title insurance agents on whose behalf the title insurance corporation reports revenue and expenses. Every title insurance agent that receives the agent data call shall complete an expense schedule and a revenue schedule, including premium and all other operating income, for each title insurance corporation that appointed it as an agent and shall timely submit to each such title insurance corporation revenue and expense schedules associated with the issuance of that title insurance corporation's policies. The title insurance agent shall allocate expenses based upon premiums written for each title insurance corporation unless a compelling reason exists to allocate in a different manner. If the title insurance agent allocates expenses on another basis, it shall specify the basis and the reason for doing so. Every title insurance agent whose revenue and expenses are not reported by another entity shall also prepare and maintain an expense schedule and a revenue schedule setting forth the title insurance agent's total annual revenue and expenses.

(2) A title insurance agent who reports data on behalf of another title insurance agent shall submit to the title insurance corporation, along with its revenue and expense schedules, the names and license numbers of those title insurance agents whose data is included in its reported schedules. A title insurance agent whose revenue and expenses are reported by a title insurance corporation or another title insurance agent by whom such agent is employed or with whom such agent is affiliated shall not submit individual revenue and expense schedules in connection with the data call. A title insurance corporation or title insurance agent shall report to the superintendent the name and license number of any agent on whose behalf it reports expense and revenue data and shall notify the title insurance agent on whose behalf it reports data that it is not required to submit individual revenue and expense schedules.

(3) Every title insurance agent shall maintain all revenue and expense schedules in accordance with the requirements set forth in Part 243 of this Title (Insurance Regulation 152), in a durable medium, for a period of six years.

(4) Every title insurance corporation shall collect and compile revenue and expense schedules for its appointed agents and submit a single title insurance agent revenue schedule and a single title insurance agent expense schedule to the statistical agent. The statistical agent shall compile all title insurance agent data into a title insurance agent expense schedule and a title insurance agent revenue schedule, and include such schedules in the annual statistical report.

(5) Every title insurance corporation shall report to the superintendent, within 30 days after the title insurance agent was due to submit the revenue and expense schedules, the name and license number of any appointed title insurance agent that is required to submit the schedules but does not do so.

(e) Every title insurance corporation shall submit to the superintendent individual annual revenue and expense schedules by May 30 of each year.

Section 227.4 Allocation of expenses.

(a) Any title insurance corporation that reports, on expense schedules submitted pursuant to the annual data call, allocated expenses for expenses incurred outside this State in connection with title insurance business in this State, shall submit to the superintendent, within 30 days of the effective date of this Part, the method of such corporation's allocation. In no event shall the amount allocated for expenses incurred outside this State exceed the percentage of premium written in this State compared to nationwide, for that year. Prohibited expenditures shall not be allocated to this State.

(b) To the extent that any expense schedules submitted pursuant to the data call for the ten year period preceding the effective date of this Part include allocation of expenses for prohibited expenditures, such schedules shall be restated and submitted within 60 days of the effective date of this Part.

(c) Every rate service organization or title insurance corporation that submits its own rate filing shall include any resubmitted expense allocation data in any new submission filed with the superintendent pursuant to subdivision (c)(2) of section 227.3 of this Part and shall verify that no statistical report includes allocated expenses for prohibited expenditures.

Section 227.5 Ancillary charges.

(a) Every title insurance corporation and title insurance agent shall charge the insured, in connection with ancillary charges paid at a closing, as follows:

(1) Patriot searches at no more than 150% of the out-of-pocket cost paid for the search. Flat fees for a specified number of names searched shall not be charged. If no out-of-pocket cost is paid for the search, then the charge to the insured shall be no more than 150% of the fair

market value of the search as charged by a non-affiliated third party. If the search is conducted by an affiliated third party, then the search shall be billed to the insured at no more than 150% of the lesser of the amount charged by the affiliated third party and the fair market value of the search as charged by a non-affiliated third party;

(2) bankruptcy searches at no more than 150% of the out-of-pocket cost paid for the search. Flat fees for a specified number of names searched shall not be charged. If no out-of-pocket cost is paid for the search, then the charge to the insured shall be no more than 150% of the fair market value of the search as charged by a non-affiliated third party. If the search is conducted by an affiliated third party, then the search shall be billed to the insured at no more than 150% of the lesser of the amount charged by the affiliated third party and the fair market value of the search as charged by a non-affiliated third party;

(3) except as provided in paragraph (4) of this subdivision, municipal or departmental searches, and any other search that is not included in the premium of the title insurance policy issued, at no more than 200% of the out-of-pocket cost. If no out-of-pocket cost is paid for the search, then the charge shall be no more than 200% of the fair market value of the search as charged by a non-affiliated third party in that county. If the search is conducted by an affiliated third party the search shall be billed to the insured at no more than 200% of the lesser of the amount charged by the affiliated party and the fair market value of the search as charged by a non-affiliated third party in that county;

(4) municipal or departmental searches that are conducted and billed by a municipality at cost plus a service charge of no more than 100% of the fair market value of the search as charged by a non-affiliated third party in that county;

(5) recording charges at the out-of-pocket cost charged by the county clerk, county register, or other governmental office, plus a maximum service charge of \$25 per closing;

(6) survey inspections at a maximum of \$75; surveys shall be billed as a pass through;

(7) overnight mail charges at no more than the out-of-pocket cost; and

(8) escrow fees at no more than \$50 per escrow.

(b) Every title insurance corporation and title insurance agent shall ensure that the amounts charged to like insureds or potential insureds are fair and nondiscriminatory.

(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 any other form; or

(2) any pick up fee.

(d) Every ancillary charge shall be reported on the HUD-1 Settlement Statement for closings that require the use of a HUD-1 form. If a closing does not require the use of a HUD-1 form, then every ancillary charge shall be reported on the closing statement or closing invoice.

Section 227.6 Filings to demonstrate continued compliance with Insurance Law article 23.

At least once every three years, a rate service organization and any title insurance corporation that submits its own rate filings, shall submit a filing to the superintendent, supported by data and actuarial analysis, which demonstrates that the current rates continue to meet the standards set forth in Insurance Law section 2303.