

## WFG Informational Bulletin

To: All New York Policy Issuing Agents of WFG National Title Insurance Company  
From: WFG Underwriting Department  
Date: December 1, 2017  
Bulletin No: NY2017-13  
Subject: DFS- Regulation 208

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### Regulation 208

Further amendments to various sections of New York Regulation 11 NYCRR, commonly known as Regulation 208, have been promulgated in their final form, and will take effect on December 18, 2017. Although efforts are being made by the NY Land Title Association and other interested groups to delay the implementation or force changes to these new regulations, **we must all be prepared to comply with these regulations by December 18**. If there are any changes, we will inform you promptly.

The following is a summary of the provisions of regulation 208 that affect title insurance agents, but is not intended as a substitute for each agent to review carefully all the provisions of the regulation to determine how they will comply.

#### **228.2 Prohibition on Inducements for Future Title Insurance Business: Permitted Expenses**

The DFS is presuming that any compensation or thing of value offered to a customer or their attorney or representative is an inducement in violation of Insurance Law 6409(d). The list of prohibited expenses in subsection (b) is extensive, and the exceptions in subsection (c) are not always clear. However, subsection (d) indicates that when in doubt, it is probably prohibited. This section is similar to regulations in many other states, and it is unlikely that this will be modified in any significant manner.

#### **228.3 Expense reporting and rate filings**

The Data Call will now reflect compliance with the above section. It is unclear at this time the extent of detail the Data Call will require, but be prepared to have a more detailed breakdown of expenses than previously. Note that subsection (d)(2) requires an underwriter to report the name and license number of any agent who does not respond to the Data Call to the DFS.

The effect of the possible future 5% rate reduction contemplated in subsection (c) is unknown at this time.

### **228.5(a)(b)(c) Ancillary or other discretionary fee**

This section applies to residential (1-4 family, or condo or coop unit used as a dwelling) real property only. It caps the amount of a service charge that can be added to various listed non-insurance searches and services ( bankruptcy, municipals, patriot search, recording, survey inspection and escrow fees), either as a percentage of the actual cost or a flat surcharge. Those not listed must be reasonable.

Review Insurance Law 2119(f) for the requirements for billing and record keeping for ancillary services.

### **228.5(d)**

Subsection (d) attempts to regulate the charges for closers, and has ambiguous provisions.

What is clear:

- This pertains to loan payoffs on residential transactions only.
- Gratuities are not permitted, and the applicant must be advised of this prohibition.
- Sellers must be notified at least three days prior to the closing of any pick-up fee for the payment for a mortgage payoff
- Any fee charged by a closer is considered an ancillary service and records must be kept for three years pursuant to Insurance Law 2119(f).

The regulation specifically states that if a closer is employed by the title Insurance Corporation or agent no separate fee may be charged for the loan payoff. The difference between closings conducted by an independent closer and an employee of the agent are unclear at this point, including how the service is paid for, what the definition of an employee is, and who has the responsibility for compliance with 2119(f). The Title Association has submitted a series of questions about this and other issues, and we expect clarification prior to December 18.

Please see the below attachments:

[Regulation 208](#)

[Insurance Law 2119](#)

*Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.*