



New York Underwriting Bulletin

From: Michael Kelly, New York State Counsel

Dated: September 23, 2014

Bulletin No: NY14-07

Name: Disclosure of Fees and Charges

The New York Licensing law requires some significant changes in procedures for all agents doing business in New York. These disclosures are unique to New York and are in addition to any disclosures required by Federal regulations.

Effective September 27, 2014, there must be three levels of disclosure of fees and charges.

Posting of fees and charges:

A new regulation, officially known as 11 NYCRR 35.6(b), requires a title insurance agent to post the range of charges for title services on its website. The text of the regulation is below:

(b) Every title insurance agent and title insurance corporation shall, on its website, make its range of charges for title services publicly available and accessible in a manner that permits a policyholder or potential applicant to independently determine the applicable charges. If a title insurance agent does not have a website, then the title insurance agent shall post its range of charges for title services in its place of business and provide the range of charges to policyholders or potential applicants in a written document.

The Department of Financial Services has not published guidance as to what is meant by a “range of charges for title services”, although clarification has been promised at some point in the future. The word “range” seems to imply a general scope rather than specific charges for every situation that may pertain in the various jurisdictions throughout the state; “title services” is not defined, but probably should be considered in conjunction with the disclosure required by Insurance Law section 2113 (b) below. The disclosure required by those agents who do not have a web site would probably be satisfied by the 2113(b) disclosure to all the potential applicants

Disclosure at time of application:

Section 2113 (b) of the Insurance Law reads as follows:

(b) At the time of the application, a title insurance agent shall provide to every applicant for insurance, a written good faith estimate of the premium on the policy or policies to be issued and a breakdown of the amount of all fees and service costs, including all filing fees, recording charges, and closing costs, and any other ancillary or discretionary charges to be incurred, and the amount of any commission or other compensation to be paid to such agent by the title insurance corporation. If no title insurance agent is utilized, the title insurer shall provide the disclosures. If the applicant is represented by an attorney, the written good faith estimate shall be provided to the attorney.

Disclosure at time of closing:

11 NYCRR 35.6(a) requires the following:

(a) At the time of closing, a title insurance agent shall provide to the applicant, or the applicant's representative, a list of its title insurance fees, including discretionary or ancillary fees, along with any other separately identifiable service charge, in accordance with the title insurance agent's or title insurance corporation's fee schedule. All fees charged by the title insurance agent shall be in accordance with Insurance Law section 2119. The title insurance agent also shall disclose to the applicant, or the applicant's representative, the premium for the title insurance policy at the time of closing. If no title insurance agent is used, then the title insurance corporation shall provide the notices.

The pertinent portion of section 2119 states:

(f) No title insurance agent may receive any compensation or fee, direct or indirect, for or on account of services performed in connection with the issuance of a title insurance policy, unless such compensation is: (1) for ancillary services not encompassed in the rate of premium approved by the superintendent; and (2) based upon a written memorandum signed by the party to be charged, and specifying or clearly defining the amount or extent of such compensation to be charged for each ancillary service as well as the total amount or extent of the compensation to be charged. A copy of every such memorandum shall be retained by the licensee for not less than three years after such services have been fully performed. For purposes of this subsection, legal services performed by a New York state licensed attorney who is also engaged as a title insurance agent shall not be considered ancillary services.

Sufficiently detailed invoices at time of closing should satisfy this requirement.

Please contact me at mkelly@wfgnationaltitle.com with any additional questions, and I will do my best to get answers.