

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## TitleTRACK

# State budget plan affects title insurance industry

In Gov. Andrew Cuomo's 2014-15 Budget Plan, two provisions are included that affect the title industry in New York. The Department of Financial Services conducted industry-wide surveys and audits over the last few years, which produced results that directly stimulated the governor's actions to include the aforementioned provisions in the budget.

The first provision is to create legislation requiring all title insurance agents to be licensed. New York and Kentucky are currently the only two states in the nation without a licensing requirement for title agents. The New York State Land Title Association has been working with the DFS and is supportive of licensing agents as a way to better police the actions of its agents and to offer a more equitable playing field in the industry.

All New York title agents who operate in other states are already used to this process and are not opposed to New York finally creating the oversight needed to weed out agents who may not have the same business ethics as the majority of the agencies here. As part of this legislation, the DFS would increase fines for anti-kick-back violations and non-disclosure of affiliated business practices to the consumer. Many in the industry view this licensing provision as a good thing and feel it has been long overdue.

The second provision, which is not as well-received in the industry, is the reduction of title insurance rates by an average 20 percent on purchase transactions and 60 percent on refinance transactions. New York has consistently been one of the states with the highest closing costs in the country. According to a 2012 Bankrate.com survey, NY closing costs averaged 20 percent higher than the next closest state.

When you consider that report and the findings from the DFS report, which had evidence of "upcharging" by certain agents to offset the costs of dinners and other forms of client entertainment, you can see why the governor felt action was necessary.

The aforementioned licensing bill will do more to prevent scenarios of agents "upcharging" or spending extravagantly on potential clients than a reduction in rates will accomplish. This is another example of how title insurance and the process to produce these policies are not truly understood by our governing bodies.

Unlike other insurance products, title insurance has some inherent qualities that make it a much different product than auto, home or life insurance. First of all, title insurance is a one-time premium as opposed to an annual premium. Another major difference is that the process involves a high degree of research and real estate law interpretation so that the real estate transaction can take place and the ownership in the property is clearly defined.

I have often felt that the product should be called title "EN-surance" instead of "IN-surance" because our job as title agents is to ensure the deal can close without issues.

We all know that the growth of the title industry is directly related to the growth of the secondary mortgage market. In order to sell mortgages in the secondary mortgage market, lenders required a mortgage or loan policy as proof to the buyer on the secondary market that they truly held the first lien position.

The cost of this policy has been passed on to the borrowers since its inception. More recently in New York, the owner's or fee policy has become more prevalent as a way to protect the consumer's interest in the transaction. Recognizing the benefit of offering both products, the title industry offers a reduced rate to the consumer when the policies are purchased simultaneously.

If we take a closer look at closing costs in New York, you will see that the main reason for our costs being higher than in other states is the beloved mortgage tax requirement that a home buyer

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must pay. And if you look at the transaction as whole, the transfer tax the seller pays skews the costs even higher.

As an example, a purchase transaction in Monroe County where the purchase price is \$250,000 and the loan amount is \$200,000 will show that the title insurance premiums including endorsements is about \$1,451, while the mortgage tax is \$1,475 and the transfer tax is \$1,000. In Zone 2, you would see a similar situation unless you want to buy a house in Yonkers. This same type of transaction in the city of Yonkers, located in Westchester County, will have title premiums close to \$1,700, the \$1,000 transfer tax and mortgage tax of \$6,800.

The title industry is concerned that the reduction of the pre-

miums will lead to either layoffs in the industry or the more likely scenario of a hybrid and cheaper search product, which will cause an increase in claims and problems at the closing table. While I applaud the governor for trying to help consumers out in New York, perhaps a more thorough investigation can result in an equitable way to save consumers money and still provide the type of products our industry has come to expect.

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