

# The Real Property Committee Report – 2014

By Andrew Lieb

The Suffolk County Bar Association's Real Property Committee is proud to report on the activities of our committee and the happenings in real estate throughout this past year.

With respect to the committee, we are organizing a public primer on flood insurance to be offered in September or October for the citizens of this county. This primer is essential now that the Homeowners Flood Insurance Affordability Act of 2014 is law and we are no longer subject to the harsh realities of Biggert-Waters. The public needs

to be educated about issues with flooding and how to protect themselves in an era where hurricanes, super storms and flash flooding seem to be our new normal.

We need your help as members of the bar to join the committee, participate, and to take advantage of your opportunity to have your voice heard, while gaining access to a great group of

attorneys whose collaborative spirit is contagious. As a committee member, we need your input in finding our next issue to tackle.



Andrew Lieb

This issue of *The Suffolk Lawyer* displays the breadth of the field of real estate. I am delighted to see articles on such divergent topics as drones, title insurance regulations, mortgage foreclosures and workouts as well as the new transactional requirements promulgated by the Consumer Financial Protection Bureau.

I am excited about real property, this committee and Suffolk County. Yet, when I forget how important this topic is in our county, all I need do is turn on any channel of the television or open a magazine or a newspaper and I am instantly

reminded that Suffolk County includes vineyards and farmland on the North Fork; shopping centers, malls and developments in our core; waterfront bungalows, homes and mansions on both shores; inspired developments and we also have the Hamptons, perhaps the most fabulous real estate playground in the entire world. This is our county.

*Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manhasset. Mr. Lieb serves as a Co-Chair of the Real Property Committee of the Suffolk Bar Association and is the Special Section Editor for Real Property to the Suffolk Lawyer.*

## FOCUS ON REAL PROPERTY SPECIAL EDITION

## A Brief Tour of New York's New Title Agent Regulation

By Vincent G. Danzi

In January of this year, Governor Andrew Cuomo presented Budget Bill S6357-D Part V / A8557-D Part V (hereinafter the "Bill"), which provides for the licensing and regulation of title insurance agents by the New York State Department of Financial Services (hereinafter the "DFS"). The Bill was approved by the Legislature and signed into law on April 1, 2014. It is slated to become effective at the end of September 2014<sup>1</sup>. Proposed regulations (hereinafter the "Regulations") to implement the purposes of the Bill were recently published July 23, 2014, and are available on the web here: (<http://www.dfs.ny.gov/insurance/rproindx.htm>).

The Bill and the Regulations will require every title insurance provider in New York State to reexamine their business policies, forms, and procedures, to make sure that they are in compliance with the new rules. The following is a brief tour of some major points of interest to be found in the Bill and the Regulations.

### Title agent licensing

This fall New York State will join dozens of other states which license title insurance agents alongside other types of insurance agents as "insurance producers." Title insurance agent licensing has been a subject of discussion among settlement services providers for many years, with New York State a part of an ever-evaporating pool of states that did not directly regulate title insurance agents. With the Bill and with the DFS's new Regulations, thus arrives a long awaited answer to the question of how New York would finally propose to directly regulate the title insurance agent. Nationally-speaking, regulation of the role of the title insurance agent, and its oftentimes companion role, the, "settlement agent," can vary greatly from state to state. In Texas for instance, where land records are most often retrieved from private, "title plants," rather

than a county clerk's office, the state has a long history of intense regulation of title insurance agents and "escrow officers."<sup>2</sup> In neighboring Connecticut, by statute, the role of the title insurance agent is reserved to attorneys at law only (with a diminishing population of grandfathered exceptions)<sup>3</sup>. However, in most states east of the Mississippi River, the title insurance agent is regulated alongside

other insurance producers as New York has now chosen to do. In states where the title insurance agent can be a licensed non attorney, the role of lender's settlement agent ("bank attorney" in New York), is often left in a sort of "demilitarized zone,"

between, "services incidental to issuance of a title insurance policy," and the practice of law. While the Bill and the Regulations do provide for disclosures and exemptions for attorneys, they do not appear to make any discernable statements regarding the role of the title agent, bank attorney, or settlement agent vis-à-vis the practice of law. Current New York title agents who can demonstrate to the superintendent (of the DFS) that they have been regularly and continuously performing the functions of a title insurance agent for at least five years, will enjoy a year-long period where they will be able to apply for a producer's license without having to take a written examination.<sup>4</sup> Licenses will have to be renewed and continuing education courses taken.<sup>5</sup>

### Disclosure of Fees

As to the disclosure of fees, the Bill concerns subject matter also covered by the federal Real Estate Settlement Procedures Act (hereinafter "RESPA"), itself of current focus due to the extensive revamping of RESPA's implementing regulations, which will take effect on August 1, 2015, less than one year after the effective date of this Bill. During



Vincent G. Danzi

this dovetailing regulatory implementation period, the "good faith estimate" should merit special attention. The Bill reuses the "good faith estimate" terminology, which has hitherto been the well-known long name of RESPA's, "GFE."<sup>6</sup> Interestingly this comes as the current guardian of RESPA (the Consumer Financial Protection Bureau or CFPB) appears to be phasing out the term by replacing the presently used "Good Faith Estimate" with the "Loan Estimate."

Although similar terminology is used, it is worth noting that the estimates required under RESPA are to be provided by a lender who is originating a federally-related mortgage loan, whereas the estimates provided for in the Bill are to be provided by the title agent, and are not limited to transactions involving federally-related mortgage loans.

However, lest we be tempted to think of the Bill's good faith estimate disclosures independently of RESPA, we need only observe the integral role most title providers presently play in enabling lenders to make their required disclosures under RESPA.

### Other subjects:

#### Premium accounts

The Bill provides that title insurance agents shall be regarded as fiduciaries in connection with "all funds received or collected as insurance agent or insurance broker."<sup>7</sup> The Regulations provide information on how to establish and use a "premium account."<sup>8</sup>

#### Title closers

Another CFPB-related concept of liability for, and vetting of, third party providers is dealt with in the Bill in the context of Title Closers.<sup>9</sup>

#### Websites and fee sheets

Title agent websites now must provide information sufficient to allow an applicant to, "independently determine the applicable charges."<sup>10</sup> Title agents who do not have websites must provide similar information in printed form.

### Time deadlines and content requirements for Title Reports:

There are now parameters for when Title Reports shall be delivered and what they should contain.<sup>11</sup>

Several things can be fairly said of New York's long awaited title agent regulation. The Bill and the Regulations pierce into sundry issues, and they come at a time when other laws and regulations that cover the same transactions are also changing. A framework has been established for "grandfathering," of current agents, but that framework will not remain open forever. Lastly, DFS has set forth rules in its Regulations that will require a fresh look at the policies and procedures of all title insurance agencies operating in New York, especially as they relate to overlapping law and regulations found at the federal level.

*Note: Vincent G. Danzi is the principal of Law Office of Vincent G. Danzi.*

1. Budget Bill S6357-D Part V / A8557-D Part V §18 of the Bill
2. See the Texas Basic Manual of Title Insurance (found here: <http://www.tdi.texas.gov/title/titleman.html>)
3. Connecticut Statutes, Chapter 700a, Sec. 38a-402(13)
4. NY Insurance Law § 2139(g)(1)
5. NY Insurance Law § 2132
6. New York Insurance Law §2113(b)
7. NY Insurance Law §2120(a)
8. 11 NYCRR 20.3(b)(1)
9. 11 NYCRR 35.8
10. 11 NYCRR 35.6(b)
11. 11 NYCRR 35.7

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