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NYS Department Financial Services now sets Sights on Title Insurers

May 5, 2017

On May 1, 2017 Governor Andrew M. Cuomo announced 2 new proposed regulations aimed at title insurers. A New York State Department of Financial Services' ("NYSDFS") investigation revealed that title insurance companies and agents spend millions of dollars on "marketing costs" that are charged back to the consumer. This is believed to be an industry wide/nationwide practice and the proposed regulations are intended to make sure that potential homeowners are not charged for expenses beyond the insurance fees associated with buying or refinancing a home.

DFS Superintendent Maria T. Vullo (who was instrumental in the NYS DFS Cybersecurity Regulations and is actively pushing for other states to follow New York's new Cybersecurity Regulation) is quoted in the NYSDFS' May 1, 2017 Press Release as saying "[f]or far too long, meals and entertainment have been used as inducement for title business. These practices must stop. DFS will protect consumers from unfair practices in the title insurance industry. Many New Yorkers who buy or refinance a home have been footing the bill without explanation for excessive fees that contribute to high closing costs. This action lets title insurers and agents know that these unscrupulous practices stop now."

The DFS conducted hearings in 2013 and its investigation found that title insurers were using the marketing expenses for golf outings, sporting events, suites at Madison Square Garden, charitable contributions, vacations, meals, entertainment, etc. for real estate professionals, including attorneys, who either refer the clients to title agents or order title reports from them.

The infractions were apparently so egregious in the eyes of the DFS that it instigated emergency regulations that are currently in effect and address these activities to protect the New York consumer. It is anticipated that these regulations will be approved and will eventually reach outside of New York.

DFS is being proactive in its perceived protection of New York consumers and may continue to investigate entities over which it has authority which includes Banks, Bank and trust companies, Charitable Foundations, Foreign Bank Branches, Holding Companies, Mortgage Bankers and Brokers, Insurance Agents and Brokers and Insurance Carriers.

Winget, Spadafora & Schwartzberg, LLP is closely monitoring these developments. If you would like to discuss the implications of the proposed regulations and where the DFS may be aiming next please do not hesitate to contact Dianna McCarthy at (212) 221-6900 (mccarthy.d@wssllp.com).

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