

Comments of the Center for Economic Justice

To the Title Consumer Shopping Guide Working Group

February 24, 2014

CEJ thanks the working group for its efforts to assist title insurance consumers. Our comments on the present draft are summarized in the following points.

1. We agree with Brenda Cude's comments that it is unclear how the draft buyer's guide relates to the working group's charge "to determine the feasibility of promoting effective consumer shopping for title agents and insurers."
2. A "buyer's guide" for title insurance consumers will not empower consumers or address the market failures – reverse competition – of title insurance markets. Any shopping tool intended to empower title insurance consumers must address the fact that title insurers and title agents view the referrers of business – attorneys, lenders, real estate agents, homebuilders – as their customers and that the ultimate consumer who pays for the title insurance is the subject of this competition among title insurers and agents for the referral of that ultimate consumer.
3. It is unclear how and when the proposed buyer's guide would be distributed to consumers in a manner that would meaningfully empower consumers, what regulators' expectations are regarding how consumers would utilize the shopping guide or how regulators will test the effectiveness of the shopping guide in meeting the regulators' goals and expectations.
4. The draft buyer's guide contains far too much technical language to be useful to a consumer. In its current form, it is more a promotional piece for title insurers than an empowerment tool for consumers.
5. The draft buyer's guide fails to alert the consumer to the key issues he or she faces, such as whether or not all title insurers charge the same rate, what activities are and are not included in the title insurance premium charge and whether the mortgage lender, attorney, real estate agent, homebuilder, developer or settlement agent is affiliated with the title insurer or title agent.
6. The working group should consider the point in time when a disclosure to consumers will enable a consumer to take action regarding title insurance.
7. The working group should consider a one-page disclosure that alerts consumers to the key issues in selecting a title insurance agent or insurer with links to further information on key topics. The key information provided to a consumer prior to, or at the point of, selecting of a title agent or insurer includes:

- a. Whether all insurers are required to charge the same rates and premium charge for the same transaction or whether title insurers may charge different rates.
 - b. The activities that are and are not included in the title insurance premium
 - c. Whether the lender/real estate agent/developer/attorney has / does not have a financial interest in who you select for title insurance services.
 - d. That you are free to select the title agent and title insurer for your transaction
 - e. That you should be suspicious if your realtor, lender, attorney, homebuilder pushes a particular title insurer or agent by saying your closing may be delayed if you select a different title insurer or agent.
 - f. That lenders will require title insurance to protect their interest up to the amount of the mortgage – the lenders title policy.
 - g. That buyers may, but are not required, to purchase additional coverage for the difference between the amount of the loan and the purchase price – the owners policy.
 - h. That title insurance is not a guaranty that the title to your property is assured, but insurance against the title insurer failing to find a problem with the title. The title insurer may try to fix a problem with the title, if one arises, but, at the end of the day, the title insurer is only required to make a payment up to the amount of the policy without fixing the problem with the title.
8. The prior point makes clear that state-specific consumer alerts are necessary and that variation among the states in terms of regulation of title premiums, activities included in the title insurance charge as well as customs about whether the buyer or seller pays for title insurance render a generic buyer's guide ineffective.
 9. Due to the nature of the title insurance transaction, the working group should also tailor a disclosure to mobile devices with links to further information.
 10. The working group should identify and define the goals of whatever title insurance disclosures it develops and test the disclosures to ensure the disclosures will accomplish those goals. For example, the goal of a disclosure may be that the consumer understands that he or she is not required to purchase title insurance from a particular vendor and may shop around for a lower price. Such a result, for example, can and should be tested with any proposed disclosure.