

February 16, 2015

VIA EMAIL: philip.barlow@dc.gov

Mr. Philip Barlow, Associate Commissioner for Insurance
Department of Insurance, Security and Banking
810 First Street, NW
#701
Washington, DC 20002

Re: DC Land Title Association
Response to DISB Proposed Rate Exam Questions
Our file no.:

Dear Mr. Barlow:

I am writing to you today on behalf of the D.C. Land Title Association (DCLTA). The DCLTA's several hundred members form the backbone of the District's title insurance industry, and each day they efficiently and professionally close the District's residential and commercial transactions.

The DCLTA welcomed the opportunity to have a voice in the process and participate in last month's meeting with DISB. In addition the DCLTA appreciated the opportunity to review the draft Examination Warrant and the draft Request for Information questions. The meeting as well as the opportunity to the review of the draft Examination Warrant and the draft Request for Information questions have provided the DCLTA with a better understanding of the DISB's current review of the D.C. title industry. We have set out in the attached memorandum specific responses to each question proposed. We have also attached two exhibits. One lists some DC specific title considerations while the other describes the myriad of tasks that but be undertaken in a settlement office to perform the work necessary to ultimately issue a policy of title insurance.

In addition, our general comments include the following:

1. Examination Format

The DCLTA membership has found DISB's approach to reviewing the D.C. title industry very confusing. In this present effort DISB has apparently combined a rate review of title insurer D.C. rates and a market conduct examination of 3 to 10 D.C. title agents. Considering DC's modest size an examination of a few agents may not be reflective of the experiences of the industry in DC, as a whole. DCLTA's membership found that many of the DISB's draft Request for Information questions did not reflect a nexus to the agent's compliance with relevant D.C. laws or administrative guidance. (i.e. questions on the agent's top sources of business, request to identify primary competitors, and a request for detail on the agent's process improvements and efficiencies).

125 West Street, 4th Floor, Post Office Box 2289, Annapolis, Maryland 21404

2. Confidentiality

We understand that applicable regulations prevent disclosing to the public the membership responses and information provided in response to the rate examination. However, the regulations do permit sharing the responses with NAIC and other regulatory bodies throughout the country. As you can understand, the DCLTA members are concerned about the obvious risk of information being improperly circulated. Further, we are concerned about the inability of agents to enforce the confidentiality agreement wherever it may be violated throughout the country.

3. Cost

The DCLTA's membership is primarily comprised of title agents that are small business owners. The impending examination will consist of gathering information not typically gathered or maintained by our members. Responding to the examination will be time consuming and expensive. Accordingly, the lost work time and examination cost will be a burden to many of our members. You advised that title underwriters will pay for agent examinations. However, our members are concerned that, considering D.C. Code 31-1403(d) provides that the cost of examination "shall be borne by the company which is the subject of the examination." Thus we would appreciate confirmation of the proposed payments.

4. Conflict of Interest

The DCLTA has concerns about the objectivity of DISB's retained examiner, Mr. Birny Birnbaum (Birnbaum). A consumer advocate for many years, Birnbaum is also the Executive Director for the Center for Economic Justice (CEJ) which states the following on its website:

*"In a tumultuous time of deregulation, elimination of many government programs, and increasingly anti-consumer behavior by regulated industries, **low-income consumers need a strong advocate** on their side. CEJ advocates through an attorney, economist and executive director with the unique credentials, experience, technical knowledge and commitment necessary **to succeed on behalf of low-income consumers.**" (emphasis added)*

The DCLTA certainly understands DISB's need to learn the newly regulated title industry and strongly believes that this is best accomplished by an objective and impartial examiner. Our members have serious concerns that DISB, the settlement industry and, most importantly the citizens of the District of Columbia are not best served with an examiner whose partiality is compromised. Indeed, D.C. Code 31-1405(a) explicitly states that "[n]o examiner may be appointed by the Mayor if the examiner, either directly or indirectly has a conflict of interest..."

5. Scope

The scope of the examination appears to be overbroad as it includes an analysis of D.C. rates as compared to Virginia and Maryland title rates (and underwriting). Rate reviews and comparisons across jurisdictional lines ignore each state has its own laws, administrative guidance, underwriting practices, expenses, claims rates, and recording protocol. Conversely, this proposed examination of three to ten D.C. agents in order to understand the entire DC settlement agent's business practice and experience seems unrealistic and statistically unattainable. This small sample size could not possibly capture the diversity of agent types and practices in D.C. including small, medium, and large agents, law firm agents, national agents, multi-jurisdictional agents, commercial agents, or direct underwriter issuing offices.

6. Methodology

DCLTA members were surprised to read in the draft Request for Information questions that "[t]he bulk of the filed rates are for commissions to agents." The term "commissions" may be typically used with respect to life insurers or property and casualty agents when describing payments to agents who merely sign up the customer, while the insurer stands behind the prospective (future) risk. DC settlement agents and their offices do much more.

As you know, title insurance involves the agent identifying (determining insurability) and reducing retrospective risk (title curative) *prior* to the issuance of a policy. Accordingly, title agents share in the title premium and at a higher percentage than property and casualty agents.

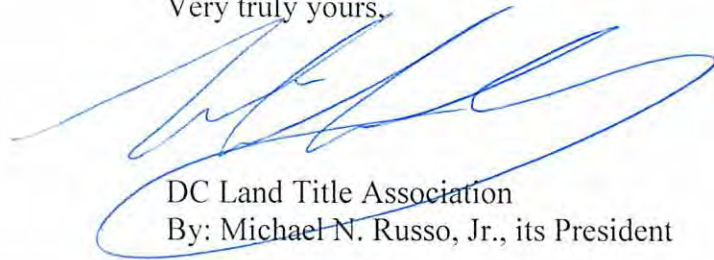
The DCLTA believes that the proposed examination is ill fitted to enabling DISB to understand this newly regulated industry to the scope, depth and objective nature of the standards required. As we discussed in previous emails and in our meeting, DCLTA is now preparing a more thorough review of their risk avoidance efforts which are specific to DC title issues. We hope the risk review will further assist DISB in understanding the DC title industry.

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Please let me know when we can discuss the above concerns.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Michael N. Russo, Jr.", is written over a circular blue ink scribble.

DC Land Title Association
By: Michael N. Russo, Jr., its President

MNR:wp

Enclosures:

- Summary of DCLTA's Members Responses to DISB Exam Warrant
- DC Title Considerations
- List of DC Title Service Activities

cc (with encl):

Mr. Robert Nkojo, DISB; via email: robert.nkojo@dc.gov

Mr. Birny Birnbaum; via email: birny@sbcglobal.net

DCLTA Members; via email distribution list

Summary of DCLTA's Members Responses to DISB Exam Warrant

Question 1: Please provide a list using a spreadsheet, word processing or text format of all title insurance policies issued on properties located in the DC by your agency in calendar year 2014 with at least the following information for each policy:

- a. Transaction identifier - this is a unique identifier for the policy
- b. Title Insurance Company Issuing the Policy
- c. Type of Policy 1: Residential or Commercial
- d. Type of Policy 2: Lender Only, Owner Only, Lender Simultaneous Issue, Owner Simultaneous Issue
- e. Amount of Coverage
- f. Date of Issue
- g. ZIP Code location of Property

If your data systems contain additional information about policies issued, please provide all data elements available.

If your data systems do not have the capability of providing a report of individual title policies, please provide a list of title policy transactions. For example, if your system allows you to report the lenders policy and the owner's policy of a simultaneous issue as separate transactions, report two transactions as set out above. If your system is only able to identify title transactions, then report the simultaneous issue with a single transaction identifier and indicate that the transaction was simultaneous issue.

Response Summary:

The majority of respondents found this question to be reasonable. Most respondents would be able to answer most of the questions, although, some respondents would not be able to easily pull this information from their system. Some respondents' systems do not collect the specific data points. Some respondents did not see why the zip code of the property was relevant as all are located in DC.

Specific comments to subparts:

- "b": At least one respondent indicated that it should be made clear that the information sought is who the underwriter is.
- "c": Many respondents indicated that their systems do not track whether the intended use of a property is residential or commercial. Policies are segregated by basic, enhanced, lender; not residential and commercial.

Lastly asking for all the data elements in one's system was perceived as being overly broad and seeks confidential and proprietary information.

Question 2: Please provide the following for each year from 2010 to 2014:

- a. Title orders open at beginning of year

- b. Title orders opened during the year
- c. Title orders closed during the year
- d. Title orders open at end of year
- e. Escrow/settlements open at beginning of year
- f. Escrow/settlements opened during the year SAME AS ABOVE
- g. Escrow/settlements completed during the year SAME AS ABOVE
- h. Escrow / settlements open at end of year SAME AS ABOVE
- i. Lender's Title Only policies issued
- j. Owner's Title Only policies issued
- k. Lender's and Owners Policies Simultaneous Issued
- l. Gross title premium all Policies
- m. Agency-retained title premium all Policies

Response Summary:

The majority of respondents found this question to be reasonable, however, statistics/information should not be collected prior to the effective date of DC legislation regulating the title industry. Most respondents maintain the information needed to respond to this question, although, for some, it would be exceptionally burdensome to gather the information as requested. Many respondents were confused by the some of the subparts.

Specific comments to subparts:

- When the file was opened (“beginning,” “during,” or “end”) was seen as redundant. The relevancy of whether a file was opened “beginning,” “during,” or “end” to a rate exam is not known. Also what constitutes “beginning,” “during,” or “end” is uncertain as those terms are not defined. Additionally, many respondents systems would not be able to determine files open on a specific date.
- The difference between “title orders” and “escrow/settlement” is not known or defined. Each term should be defined. Also, if the difference between “title orders” and “escrow/settlement” is cases opened, but no title policy was issued, then the files without title policy are not relevant to a rate exam.

Question 3: What services does your agency offer? Please list all services offered in DC, VA and MD. Please provide your answer in a table with four columns. Column 1 is a description of the service, Columns 2,3 and 4 are for DC, VA and MD, respectively, with the fee charged for each service in the column/row if you provide that service in that state. Do not include title insurance or closing protection letters in this list.

Response Summary:

Respondents noted that services and charges for those services in VA or MD are irrelevant to a DC rate exam. Additionally, it was noted that a rate exam should focus on claims in DC, not services. In order to make meaningful use of agents experiences in VA or MD DISB must review all aspects of VA and MD practice, law and regulation. Otherwise it is impossible to provide an “apples to apples” analysis. DC is an urban environment of 660,000 residents whereas VA and

MD have different environments and populations in those environments. This question seems to fail to try to appreciate scale and efficiencies.

Question 4: Please provide any internal expense or profitability analyses for provision of any of the services you offer to the public or to title insurers. This request includes any or all components of the production and issuance of a title insurance policy.

Response Summary:

Respondents expressed strong concerns regarding confidentiality and the possibility of revealing potentially privileged information, e.g., legal services beyond the scope of the title transaction. Most respondents stated that they do not have specific profitability or expense analyses for operations solely in DC and some do not have this information at all. Additionally providing an overall expense or profitability analyses, which would include other jurisdictions that the agency operates in, was not seen as relevant to a DC rate exam. Moreover, for some settlement entities, which are combined with other business endeavors, such as law firms, it is difficult to separate out title specific figures from overall financial commitments.

Question 5: Please provide a list of all employees and significant contractors of your agency with a brief description of the employee or contractor job title and functional activities.

Response Summary:

Many respondents thought this was a reasonable question, however, they thought names of individuals is irrelevant. It was suggested that a list of positions be provided and the number of individuals in each position identified. It was also noted that employees are often cross-trained and may fulfill more than one position at any given point in time particularly with a small settlement company or a settlement company that is associated with another entity, such as a law firm. Several respondents raised issues of confidentiality and assurance of confidential treatment and protection. What a "significant" contractor is, is not defined. A respondent suggested that a list of contractors who are not reimbursed by the consumer on the HUD-1 could be provided. At least one respondent noted that it would be difficult to identify employees who only work on DC cases.

Question 6: Please identify by job title the five highest paid employees or owners of your agency by position and the annual compensation by year from 2010 to 2014, broken out by salary, commission, bonus, benefits, profit sharing, other. We recognize this is very sensitive and confidential information and, as with all information provided in response to this request, will be carefully guarded and kept confidential.

Response Summary:

Respondents did not find this question relevant to a rate exam. There was great concern expressed over the confidentiality of this information. A respondent pointed out that DC Code §31-1404(e), states that the report may be open for public inspection. Additionally, it was noted that because most companies are multi-jurisdictional, the five highest paid employees/owners might not be associated in any way with DC operations. Some respondents

stated that they would be willing to provide aggregate salary information and some would provide w-2s or 1099s.

Question 7: If any of your employees or contractors is compensated in whole or in part on the basis of sales volume, please describe the compensation structure for those employees.

Response Summary:

Respondents did not find this question relevant to a rate exam. There was great concern expressed over the confidentiality of this information. Some respondents stated that they would be willing to provide total salary.

Question 8: Please provide a copy of your current contract for each title insurance company for whom you have issued a policy in the last five years. If your contract with a title insurer was terminated within the past five years, please provide the last contract in effect.

Response Summary:

Respondents indicated that DISB should ask the underwriters for this information. Some respondents noted that underwriters' consent and approval might be necessary to provide this information. Additionally, respondent thought this question to be irrelevant to a rate exam. One respondent noted that if DISB wants to know rate splits that information could be found on HUD-1s.

Question 9: Please provide audited financial statements for your title agency for each of the past three years. If the financial results of your title agency are included in those of a larger enterprise, please provide the financial statements for the larger enterprise. If you do not routinely obtain an audited financial statement for your agency, please provide unaudited annual financial statements

Response Summary:

Respondents did not find this request relevant to a rate exam. At least one respondent pointed out that agencies file DC tax returns that could be provided. Almost all respondents noted that they do not have audited financial statements. Additionally, agencies would not be willing to provide aggregate financial statements and did not find the request for aggregate financial statements to be relevant to a DC rate exam. Not only would an aggregate financial statement include information from other jurisdictions, but it would also include earnings from non-title services. Additionally, this question made respondents wonder whether DISB is confusing regulation of our industry with that of a utility.

Question 10: Which title and escrow software package to you use?

Response Summary:

Respondents would not have an issue providing this information, although, the relevancy to a rate exam was questioned.

Question 11: Please estimate the percentage of title orders for which your agency performs a curative action prior to issuing the policy.

Response Summary:

Respondents found this question relevant to a rate exam, however, nearly all respondents found this question to be unreasonable do to the burden it would create to accurately gather this information. Nearly all of the respondents noted that each file would have to be reviewed to respond to this questions as this data is not captured in any data system. Additionally, “curative action” is not defined and there is broad range of what could be considered “curative action.” Additionally, “curative action” may take place before and after a file is closed. The area of risk avoidance is one in which the DCLTA believe it can best address in it subsequent work with DISB during the next phase of its work, as referred to in our prior emails. Nearly all respondents noted, however, that a very high percentage of all transactions closed required some curative actions and several noted that even if there was just one (1) curative action in a given file, the time taken to cure it could easily dwarf or exceed the quoted settlement fee.

Question 12: Please list the five most common curative actions you perform.

Response Summary:

See response to Question 11. Additionally, some respondents noted that this information is not tracked, and therefore it is not possible to accurately respond to this question.

Question 13: Please estimate the percentage of title orders for which you require underwriting assistance from your title insurer.

Response Summary:

Respondents generally found this question difficult to respond to for two reasons. One, this information is not tracked; and even if one were to review all its files, an accurate number would not be possible because guidance on minor issues (clarification of underwriting requirements, confirmation of how to handle a particular issue, etc.) would not be in the file. Second, “underwriting assistance” is not defined and thus, what should be included is not clear. For instance, does this mean attending classes provided by the underwriter either in person or by webinar? Does this include consulting underwriters’ libraries and other materials made available by the underwriter? Additionally, respondents noted that the relevance of this question to a rate examination is not clear.

Question 14: Please explain how your agency performs title search and examination. Do your employees perform these functions? Do you utilize contractors? Do you purchase a title search package?

Response Summary:

Respondents generally found this question to be reasonable, although, at least one respondent felt it was not appropriate and could be incorporated into a list of tasks. It was also noted the question and responses should be limited to DC transactions.

Question 15: Please identify the sources of title information you use to prepare a title commitment with a description of the information obtained from each source. Please identify the cost of the information from each source. If you purchase a title search package from a vendor, please identify the vendor and the cost for the search package.

Response Summary:

This question raised confidentiality issues for some respondents and others saw this as a duplicate of question 9.

Question 16. Please identify any automated title search, examination or underwriting activities and the software used for the automated activities.

Response Summary:

Respondents generally found this question to be reasonable, although, at least one respondent felt it was not appropriate and could be incorporated into a list of tasks.

Question 17: Please provide a list of a title insurance claims your agency has paid in whole or in part from 2010 through 2014. Note: This is not a request for all claims filed with your title insurer, but only for claims for which your agency contributed to the claim payment. For each such claim, please identify the cause of loss and whether any part of the claim payment your agency made was covered by an errors and omission or other insurance policy.

Response Summary:

Respondents generally found this question to be reasonable. Several respondents added that claims or potential claims paid directly by the agent or corrective actions taken by the agent to avoid a claims being submitted to an insurer should be included in the response.

Question 18: Please provide a list of all data elements you maintain in a database or searchable software for your title transactions.

Response Summary:

Respondents found this question to be out of the scope of a rate exam.

Question 19: This is a request for all general ledger revenue and expense accounts in your financial accounting system.

Response Summary:

Respondents found this question to be duplicative of other questions in the warrant and out of the scope of a rate exam. Respondents believe that their DC tax returns would be sufficient.

Question 20: Requests information regarding underwriter audits. Please advise if you retain audit reports and what information in the audit report would you be hesitant to reveal?

Response Summary:

Respondents felt that this information should be obtained from underwriters.

Question 21: Seeks to document the top 5 sources of referrals.

Response Summary:

Respondents found this question to be outside the scope of a rate examination. Many respondents do not track this information. Many would not be willing to provide this information.

Question 22: Do you provide any free services to your sources of title insurance and settlement orders? For example, do you charge a fee for a title commitment if no title policy is issued from that title order? Do you provide information or printing to any of your sources of business without charge? If so, what information or service to whom and in what volume.

Response Summary:

Respondents found this question to be irrelevant to a rate exam. Additionally, respondents thought it to be vague, misleading and something more appropriate for a RESPA enforcement inquiry. Respondents noted that clients are not charged for title comments, surveys, or labor for files that fail to close regardless of who referred the business. Additionally agents often call title attorneys for advice whether or not they are a source of business. Educational programs are also provided to agents free of charge regardless of whether they are a source of business.

Question 23: Is your agency affiliated with any title insurer, real estate agency, lender, mortgage originator, attorney, developer, homebuilder, or other organization involved in residential real estate activities? If yes, please describe the affiliated business arrangement, including year established, ownership structure, and percentage of title orders from the affiliated organization, name of affiliated business administrators (if used) and services provided by the administrator.

Response Summary:

Many respondents found this question irrelevant to a rate exam.

Question 24: Please provide copies of any marketing service agreements your agency currently has in place or which were in place at any time in 2014.

Response Summary:

Respondents found this questions to be irrelevant to a rate exam. It was suggested that aggregate marketing expenses for DC business would be relevant

Question 25: Please identify any differences in the DC, VA, and MD jurisdictions that make it easier or harder or more or less expensive to perform title and settlement services. Stated differently, are there things about the DC that make it a more expensive or difficult jurisdiction to provide title and settlement services than in MD or VA?

Response Summary:

The relevancy of how files are handled in other jurisdictions, be it VA and MD or the many other jurisdiction that several DC agents are licensed, was questioned by respondents. Respondents stated that the question should be limited to general underwriting issues particular to DC. DCLTA has created a list issues particular to DC based on responses. See attached document “DC Title Considerations”.

Question 26: Please list the activities and tasks your agency may perform during the process of soliciting title business to opening of a title order to issuing a title policy through any claims activity you perform.

Response Summary:

DCLTA has created a list of activities that agencies engage in based on responses. See attached document “Title Agency Activities for DC”.

Question 27: Please describe the top five –ranked by employee time expenditures – types of activities you engage in for marketing your business and otherwise acquiring title and settlement transactions.

Response Summary:

Respondents found this question irrelevant to a DC rate exam. Additionally, most respondents do not track marketing efforts in a quantitative manner, and therefore, would not be able to rank their marketing activities.

Question 28: Please identify the title agencies and/or title insurers you consider to be your primary competitors. Please explain why they are your primary competitors.

Response Summary:

Respondents found this questions to be irrelevant to a rate exam. Generally, respondents feel that any other title company operating in the District to be their competitor.

Question 29: Please identify any efficiency or productivity improvements in your title or settlement transactions over the past five years or expected over the next two years.

Response Summary:

Respondents had concerns that disclosing this information could give a way their competitive edge. Other respondents noted that it is a bit of a see-saw, there are efficiency improvements and at the same time burdens are added. An example of this was e-recording. There is a reduction in turn-around time and travel and delivery costs are reduced, however, someone must scan documents and some of the indexing work is shifted from the Recorder of Deeds to the settlement company.

Question 30: Please identify any regulatory changes or title insurer requirements that have increased the time and activity in your title and settlement transactions over the past five years or expected over the next two years.

Response Summary:

Respondents general found this questions to be reasonable, although, it was noted that the question shows a lack of knowledge of the title industry in that there are many factors in addition to regulatory changes or title insurer requirements that effect time and activity such as court cases, administrative actions, procedural changes, etc. Moreover, we are at the precipice of a significant federal regulatory upheaval with the new RESPA/TILA statute taking effect on August 1, 2015. The CFPB regulatory enforcement actions and the responsive actions by the lender industry have caused the settlement industry to review and adjust may of its operating procedures through the implementation of ALTA's Best Practices pillars and otherwise.

GENERAL COMMENTS:

Questions and responses should be limited to DC as this is a DC rate examine.

DISB may be using a "free market" paradigm that would result in both reduced rates and the elimination of fixed rates. Using variable pricing would violate RESPA, a statute that they are required to enforce; and, if revenues decrease below a certain point, it will no longer be possible to do quality work. The latter happened 10-15 years ago, and the survivors later recouped their losses by charging sellers and borrowers to clean up the messes.

My concerns are that DISB does not seem to completely understand the title/settlement industry and misconstrues information in its attempts to provide consumer protection which can cause the end product to be more expensive to consumer as a result. This is an audit and will take resources and cause additional expenses.

Should be limited to DC properties only

The questions are all based on corporate financial information for each individual agent. This, to us, is an invasion of privacy. What right do they have to obtain the information being requested and how does it pertain to rates?

The questions presented also would be burdensome to any agent to compile.

An agent noted that it files a non-resident income tax return with the District of Columbia that provides detailed information regarding its income and expenses as they relate to operations. With an appropriate Order maintaining its confidentiality, limiting distribution of information to DISB alone and not to the regulatory industry, this agent would be willing to share the DC Tax Returns it already files. Any further examination of the agent's financial books and records should be limited to DC escrow accounts and title insurance related activity.

Although DISB indicates in a few places it will keep information confidential, DC Code §31-1404(e), states that an examination report may be open for public inspection. Many of DISB's requests are for private information that agents would not want available for public inspection or for distribution to other regulators or the regulatory industry

One respondent noted that its gross income from DC operations over the past 5 years has been approximately 1.6% of its overall gross income. If this agent is selected as one of the title companies to be examined by DISB and the questions remain as time consuming and invasive as proposed, it would engage in an analysis of whether the time and expense of going through such an examination, together with the possibility that the agent's internal information may be made public, would justify continuing to maintain a DC title insurance producer's license.

DC Title Considerations

1. In order to obtain a copy of the subdivision plat or A & T Plat, you must physically go to the Office of the Surveyor for the District of Columbia to obtain. Information in the Surveyor's Office is not available on-line as it is in MD.
2. There is a gap in the land records from the mid-70s to the early 80s that sometimes make it difficult to locate a deed or other document recorded in the chain of title during that time period. This creates uncertainty regarding the status of title and increases underwriting risks.
3. DC Foreclosure and REO transactions are incredibly more complex than in Virginia and Maryland. DC's foreclosure procedures and implementing regulations have been in a near constant state of change since 2010, and have made insuring any foreclosure or REO transaction extremely risky as there is very little finality to the process. Underwriter approval, when it can even be obtained, is necessary in every foreclosure or REO transactions for some agents. Moreover, significant work is often done on a foreclosure or REO transaction only to find that the title is completely uninsurable, which results in the agency not being paid at all. Finally, over the past year lenders have been proceeding to foreclose under the common law judicial foreclosure proceeding (as opposed to the statutory non-judicial proceeding), which requires review of Superior Court proceedings, often hundreds of pages long, and underwriter approval.
4. Tax Certificates are not provided timely. This often means addressing issues at the last minute or even after closing.
5. The fluidity of the tax bills and the tax website in the District. Back taxes are added at a later date and backdated so that a printout from the tax website which you have when a file closed may be completely different a week or even months later with old taxes being added and listed that were not shown before.
 - a. While a tax cert is an answer to this issue, as alluded to above, obtaining a tax certificate now takes more than a month.
6. Poor communications between office in DCRA and OTR.
 - a. Vacant Property-When an exemption is issued, DCRA has to notify OTR, where one person is tasked with coding the exemption, and then forwards to another department to re-compute tax bill. Process takes several weeks at each step, which delays closings. Tax status changes without notice and affect prior periods.
 - b. Converted tax & water liens, and special assessments. Payment is made to OTR. It is difficult to get the originating agency (DCRA or DC Water) to release their lien.
 - c. Impractical requirements of DC agencies: Ex. When a vacant property exemption is issued by reason of renovation or marketing, Housing Enforcement requires the owner-occupant purchaser to apply for a permanent cancellation of the vacant property status post-closing, with copies of their utility bills sent as supporting documentation. It is very difficult to get less educated purchasers to do this until after the exemption expires and they receive a huge tax bill.

7. Tax Sale Redemption is significantly more complex in DC than in Maryland. Tax sale attorney fees must be paid to the tax sale attorney and any outstanding taxes must be paid to DC. DC then must reimburse the tax sale purchaser prior to the tax sale attorney dismissing a tax sale foreclosure proceeding. This requires significant post settlement monitoring of tax sale cases to make sure that the case is in fact timely dismissed. Quite often DC does not reimburse the tax sale purchaser timely and the tax sale foreclosure proceeds after our settlement, which requires additional time to resolve. Requesting a tax sale redemption certificate in DC is also a time consuming process, which often requires follow up to obtain the tax sale redemption certificate.
8. Tax credits on tax bills. It is hard to discern who paid the taxes and if a refund is in process. The credit automatically passes to the next bill, even when ownership has changed. For the previous owner to receive the credit, OTR requires the settlement company to become involved.
9. Retroactive posting of municipal liens does not occur in Maryland or Virginia with anywhere near the same rates as in DC. OTR's website changes after closing as old liens are sometimes added to an account. This requires time and effort to resolve.
10. The myriad DC Agencies that are able to assess liens, which convert to a tax lien.
11. Obtaining payoffs and from multiple agencies for various infractions.
12. Unrecorded tickets from DPW
13. Water liens paid to OTR v DCWASA – hard to get releases.
14. DC agencies refuse to accept transmissions from secured emails, but often require information containing private information, e.g., HUDs. Thus sending documents to DC agencies often violates best practices and privacy laws which put title agents at risk from lenders, individual parties, and regulators.
15. DOPA
16. TOPA. Failure to strictly comply with TOPA can result in total divesture of title. No other jurisdiction's tenant laws match TOPA.
 - a. Strict compliance with TOPA is required by title underwriters, due to high claim and loss ratios.
 - b. Many real estate agents demonstrate a striking inability to follow the Rental Conversion and Sale Division's instructions attached to the forms, which frequently (i) necessitates the forms being filed 2 or more times, and (ii) spending a great deal of time persuading real estate agents that the form instructions must be followed.
17. No synchronization between TOPA exemptions and Rent Control Exemptions
18. Dealing with the condemnation office/Board. These actions are much more frequent than in MD or VA.
19. Indexing idiosyncrasies: With the advent of electronic recording which allowed users to enter their own indexing information, there was false comfort taken that the indexing would be more accurate than in the past. This sense of comfort was dispelled when it was discovered that the Recorder of Deeds simply re-enters the indexing information, thus subject to the same errors that have

- plagued the industry. When there is an indexing issue, documents may remain undetected and result in serious title issues.
20. There is often a complete disconnect between the records of the Recorder of Deeds and the ownership records maintained by the DC Office of Tax and Revenue that appear on the web site page.
 21. Homestead Exemptions issues. Many DC title agencies submit the Homestead Exemption Form as a courtesy for clients. Agencies, however, often do not receive confirmation that the form has been received and often do not receive confirmation when the form is rejected. Agents often have to become involved in homestead issues long after a file has settled. OTR will reject a homestead exemption for revocable trust that do not bear the same name as the owner occupant, even though the statute is devoid of this requirement.
 22. Homestead audits are not posed online or reflected in a title search, which can result in thousands of dollars in delinquent taxes with no notice.
 23. Embassy/Foreign property conveyances.
 24. Transfer on Death deeds in the chain.
 25. Unlike Maryland, there is a fee for obtaining documents from the Recorder of Deeds.
 26. Registration for Tax Abatement must be done at time of recording, but is not approved until after settlement. Therefore, title agents must take precautions at closing to account for rejected tax abatements and the undoing of certain aspects of the transaction. If the abatement is not rejected, then accounts must be squared. If the abatement is rejected, then the agent may become involved with obtaining additional documentation, making legal arguments as to why it should not be rejected. OTR recently has rejected tax abatements that benefit those that the law was not intended to benefit (e.g., wealthy college kids with no income whose parents can give them a cash gift to purchase the property—a major loophole in the law), without appreciating that it is only the legislative branch of government that has the authority to change the law and thus close the loophole.
 27. Land Records issues.
 - a. Search instructions do not make it clear that a search using the default “name/square/lot” criteria will only return instruments with matches for all 3 criteria and will not pick up judgments and tax liens because they don’t specify a lot & square.
 28. Disconnect between Register of Wills and Recorder of Deeds. DC is only local jurisdiction that automatically closes estates after a set time (3 years unless extended). The DC statute permits Personal Representatives to engage in ministerial acts after closing of estates. The Register of Wills and Recorder of Deeds have different legal opinions of the meaning of the term “ministerial act”, which results in the need to reopen estates, which takes a minimum of 30 days.
 29. The Register of Wills sends estate jackets to the DC Archives as soon as they are closed. If it is necessary to review an estate file, it must be requisitioned, and the

delivery time from DC Archives to Register of Wills is 4-6 weeks, and sometimes longer depending on Congress' needs at any given time.

30. Lack of clarity regarding non-resident title agent CE requirements.

List of Title Service Activities (in no particular order):

1. Order and review the Tax Certificate
2. Coordinate with the parties to remove blighted or vacant status
3. Search OFAC for FSE (Foreign Sanctions Evaders) list to determine whether parties appears on the list.
4. Run Patriot Act search to determine whether parties appears on the Designated Persons list.
5. Conduct settlement
6. Verify parties at settlement
7. Notarize documents
8. Answer questions from parties, agents, and lenders prior to settlement
9. Read, edit, and follow lender instructions.
10. For properties that are in foreclosure:
 - a. Obtain foreclosure documents, many of which are not public documents and must be obtained from a foreclosure trustee.
 - b. Review Superior Court foreclosure case file to determine compliance with DC statutory and regulatory requirements.
 - c. Determine finality of foreclosure re: mediation regulations
 - d. Determine whether all interested parties were notified of foreclosure sale
 - e. Determine compliance with applicable foreclosure procedure
 - f. Obtain underwriter approval for residential foreclosures
11. For properties that are in tax sale:
 - a. Review tax sale file to be sure the tax sale was properly conducted and all interested parties notified
 - b. Obtain tax sale attorney's fees
 - c. Obtain tax sale redemption figures from OTR
 - d. Monitor tax sale foreclosure for dismissal following settlement
 - e. Monitor land records following settlement for release of lis pendens related to tax sale foreclosure proceeding
 - f. Follow up for tax sale redemption certificate
12. Provide purchaser/borrower with a quote
13. Communicate with Agents to obtain party information (This may have to be done repeatedly).
14. Obtain commission splits and brokerage fees from agents
15. Review the Contract of Sale
 - a. Obtain any addendums that were not properly included in the contract, if applicable
 - b. Be sure the correct lot and square are stated in the contract and that the lot and square are noted in all the appropriate places.
 - c. If a condo and parking conveys, verify whether parking is separately deed or a limited common element.

- i. If parking is a limited common element, confirm with condo management that the parking space assigned matches the parking space in the contract.
 - ii. If parking is separately deeded verify that correct lot and square associated with the parking space has been transferred by previous deeds.
16. Obtain home warranty invoice, if applicable.
17. Obtain termite inspection invoice, if applicable.
18. TOPA
 - a. If contract indicates tenants are/were in the property at the time the property was listed, obtain all necessary TOPA notices from agent(s).
 - b. Resolve issues with TOPA notices.
 - c. Get review of file letter from DCHD
 - d. Obtain TOPA affidavits or assignments
19. If the seller(s) is a foreign person, then:
 - a. Determine whether the seller(s) is a foreign person for tax purposes.
 - b. Discuss with the foreign seller(s) the necessary actions and options for handling FIRPTA withholdings.
 - c. Follow up post closing for Certificate from the IRS
20. Order title search.
21. Review title abstract.
22. Examine each deed identified in the search for correct legal description, correct parties, reservation of rights, proper signature and notarization
23. Review certificate of releases for correct signature
24. Obtain releases (or other satisfactory documentation) for deeds of trust that have been paid but still appear of record, which may include all or some of the following actions:
 - a. Contacting previous title company.
 - b. Contacting lender for release.
 - c. Drafting a release, if requested by the lender.
 - d. Contacting insurer to request a letter of indemnity.
 - e. Contacting client and walking client through old documents for possible release received
 - f. Getting authorization from client to speak to lender to get release
 - g. Finding lender if lender is no longer in business or merged with another lender
25. Review covenants and restrictions that affect title.
 - a. Discuss issues and resolutions with appropriate parties.
 - b. Issue affirmative coverage in the form of approved endorsements, if applicable.
26. Examine real estate tax records for delinquent taxes and liens. If there are tax issues, then:
 - a. Discuss issues and resolutions with appropriate parties.
 - b. Contact tax office to obtain payoffs.

- i. NOTE: DC OTR will not provide written payoff which can cause future liability.
 - ii. Contact vacant property office, if necessary.
 - iii. Contact tax sale certificate holder and/or attorney to arrange payment for redemption, if necessary. Difficult to obtain written proof—release of interest
 - c. Determine whether any possible future tax consequences exist due to the misclassification of the property or in applicable deductions.
 - d. Request tax audit, if necessary.
- 27. Contact various DC agencies to address any housing code violation tickets, water/sewer liens or other liens, i.e. “clean city” liens and arrange for payment and releases.
 - a. NOTE: It is difficult to be certain all violations/liens have been satisfied, as the respective DC offices will not issue written pay off statements
- 28. Review judgment report of every person or entity in chain of title during the judgment period to determine whether judgments are liens on property.
- 29. Order survey, if required.
 - a. Review survey for encroachments, violations of setback lines, or other matters affecting title;
 - i. Survey review is often more time intensive in DC due to typical situations where property improvements in DC (fences, patios, decks, walls, walks & parts of buildings) are located in the public space
 - b. Compare legal description on deed for accuracy for purposes of policy coverage and endorsement coverage.
 - c. Discuss issues revealed by the survey with the agents, if applicable.
 - d. Resolve survey issues, if necessary.
- 30. Run PACER search to determine whether any of the parties have filed bankruptcy. If a party has filed bankruptcy, then:
 - a. Examine the bankruptcy case to determine status.
 - b. Contact the bankruptcy trustee and/or attorney.
 - c. If necessary, obtain a Court Order, to proceed with transaction.
 - d. Discuss issues and resolutions with appropriate parties.
- 31. Communicate and negotiate with lender or lender’s attorney regarding requested ALTA endorsements or affirmative coverage.
- 32. Request mortgage payoffs.
- 33. Request condo payoffs.
- 34. Prepare preliminary HUD for lender and the parties.
- 35. Revise HUD based on lender’s instructions.
- 36. Obtain Homeowner’s Insurance information if not provided by the lender.
- 37. Prepare a title insurance jacket/commitment/CPL with requirements to convey or release all of the interests identified in the title abstract and except from coverage matters of record that the Contract of Sale requires the buyer/insured to accept

38. Prepare deed.
39. Obtain 3rd party invoices.
40. For properties that are or have been in an Estate:
 - a. Request and obtain Estate document.
 - b. Review Estate documents to ensure that statutory procedures were properly followed.
 - c. Ensure that proper parties have power to convey or encumber.
 - d. Ensure that the proper parties have executed contract.
 - e. If necessary, contact personal representative or attorney for the estate for curative actions.
41. For parties that are held by or being bought by entities:
 - a. Request and obtain entity documents (Articles of organizations, bylaws, operating agreements, partnership agreements, certificates of good standing, etc.).
 - b. Review entity documents to ensure the proper parties have and will execute documents.
 - c. Obtain appropriate resolutions, if necessary.
 - d. Discuss any issues with the necessary parties.
42. For properties held by or being bought by a trust:
 - a. Request and obtain trust documents.
 - b. Review trust documents to ensure the proper trustee(s) has or will execute documents and has the power to execute documents.
 - c. Provide lender with a review of trust letter, if necessary.
 - d. Discuss any issues with the necessary parties.
43. For properties in Guardianship/Conservator:
 - a. Request and obtain guardianship file.
 - b. Review file.
 - c. Determine whether the court has authorized the sale of the property.
 - d. Discuss any issues with the necessary parties.
44. Coordinate/schedule closing.
45. Complete HUD
 - a. Make sure the HUD balances
 - b. Get approval from all parties.
46. Obtain and review lender's documents.
 - a. Communicate with lender regarding any issues with the documents
 - i. Missing documents
 - ii. Wrong names on documents
 - iii. Names incorrectly spelled
 - iv. Incorrect escrows or escrow payment schedule
 - b. Prepare lender's documents.
 - i. Add notary information and other information as necessary.
47. Power of Attorney, if applicable:
 - a. Draft power of attorney.

- b. If there is an existing power of attorney review it to be sure it allows for the sale/purchase of the specific property.
 - c. Contact the principal to determine the veracity of the power of attorney.
 - d. If principal is unreachable, determine and verify that there is a legitimate reason for the principal to be unreachable.
 - e. Address issues regarding competency of principal, if applicable.
 - f. Obtain approval of the POA from the lender, if POA is for the purchaser.
 - g. Discuss any issues regarding the POA with the necessary parties.
48. Make adjustments as necessary that come up at settlement.
49. Get lender approval for adjustments
50. Review executed closing documents for completeness and compliance with lender's instructions.
51. Send funding documents to lender for disbursement authorization.
52. Scan and/or make copies of all closing documents for agent's file
53. Give copies closing docs to sellers and buyers.
54. Send original executed loan documents to lender.
55. Record recording documents
- a. Address rejections from the Recorder of Deeds
 - i. Obtain additional documentation to submit to the ROD as necessary.
56. Order preliminary water bill
57. Order a final water/sewer bill
- a. Follow up for receipt.
 - i. Note: Often this requires multiple inquiries
 - b. Review final bill for accuracy
 - i. Verify the final reading date is correct
 - ii. Verify the impervious water sewer charge is included
58. Disburse funds to appropriate parties.
59. Ensure that all commitment requirements have been met.
60. Submit documents for recording.
61. Ensure that documents have been properly recorded and proper recording references included in the final title policies.
62. Ensure lenders/lienholders/etc. who have been paid off through the transactions have recorded releases.
63. Send purchaser/borrower original recorded documents.
64. Send lender recorded deed of trust and other relevant recorded documents.
65. Confirm the policy premium.
66. Prepare final owners title policy and send to purchaser.
67. Prepare final lenders policy.
68. Remit premium and copy of policy to underwriter.
69. Reconcile files to ensure proper disbursements of funds.
70. Hold and properly disburse any escrows
71. Stay abreast of changes to laws and agency policies that affect the transfer of property in DC.

72. Stay abreast of changes to laws and agency policies that affect estates in DC.
73. Stay abreast of changes to laws and agency policies that affect entities in DC.
74. Stay abreast of changes to laws and agency policies that affect trusts in DC.
75. Stay abreast of changes to laws and agency policies that affect notes and security instruments in DC.
76. Stay abreast of changes to laws and agency policies that affecting taxes in DC and at the Federal level.
77. Stay abreast of changes to laws and agency policies that affect the transference of tenanted properties in DC.
78. Stay abreast of title agency rules and regulations
79. Gather information from Condo/HOA management companies
 - a. Verify whether there are any special assessments
 - b. Verify whether the condo dues are current
 - c. Discuss any issues with the appropriate parties
80. Obtain death certificates if any record owners are deceased, and the seller is the surviving tenant by the entirety or joint tenant.
81. There is a multitude of other activities that are simply necessary to run a business that must be done whether those activities directly touch a file or not. If these activities weren't done, then the time spent on a particular file wouldn't matter because the company would not exist.