



REGULATION 208 Summary

11 NYCRR 228

(Effective December 18, 2018)

In an effort to provide further consumer protections, the New York State Department of Financial Services (“DFS”) has enacted regulation 208, which becomes effective on December 18, 2017. All title insurance providers (TIPS) must comply with the regulations. Below you will find a list of the regulations we believe will have the greatest impact on the transactional real estate attorney.

MARKETING EXPENCES AND ACTIVITIES:

Most marketing expenses will be **prohibited** pursuant to Section 228.2. As a result, TIPS will be prohibited from providing items such as:

- Entertainment – including tickets concerts, Broadway shows and sporting events
- Most meals and beverages – including a simple cup of coffee
- Gifts of any kind – including cash, gift cards and gift certificates
- Outings – including golf outings
- Parties of any kind
- Assistance with business expenses
- Use of a TIP’s premises without charging a fair rent (we do not believe this includes the occasional use of a TIP’s conference room)
- Paying the fee of a professional representing the insured
- Providing non-title services free of charge OR at a reduced rate; this means we can no longer provide a reduction of fees nor can we waive any title charges which occasionally had been provided as a professional courtesy

It is important to note that the regulation and the related statutes state that penalties will be imposed on both the 'giver' AND the 'receiver' for any violation of the provisions set forth above and the anti-inducement provisions.

The regulation in Section 228.2 (c), sets forth the following marketing expenses/activities which are **permitted**:

- Advertising in publications or media at market rates
- Promotional items of de minimus value which have a permanently affixed logo
- Promotional events open to and attended by the public
- CLE events, including complementary food and beverages, IF they are open to any member of the legal profession
- Complementary attendance at marketing event
 - Title insurance must be discussed
 - At least 25 diverse individuals must be invited
- Charitable contributions
 - Must be paid by negotiable instrument and must be paid to the charity
 - Must be made in the name of TIPS
- Political contributions

ANCILLARY FEES OR OTHER DISCRETIONARY FEES:

Section 228.5 sets maximum permissible charges for specified ancillary services. These minimum charges apply only to residential real property. (Pursuant to 228.1(n)(1) *Residential real property* means: (i) real property improved by a 1-4 family dwelling, including property used in part, but not entirely, as a professional office or business; and (ii) an individual condominium or cooperative apartment or unit used as a dwelling)

- Patriot, Bankruptcy and Municipal searches – 200% of the out-of-pocket cost paid by the TIPS
- Recording fee - \$25 per document plus out-of-pocket cost paid by the TIPS
- Survey Inspection – \$75.00 plus out-of-pocket cost paid by the TIPS
- Overnight Mail – out-of-pocket cost paid by the TIPS (no markup)
- Escrow services – \$50 PER escrow
- All other fees not specified must be reasonable

CLOSERS FEES:

Section 228.5(d)(1) prohibits the closer from receiving any compensation directly or indirectly from or on behalf of the applicant. As a result:

- Closer gratuities, from the applicant, are prohibited. Benchmark will compensate the closer.
- Attendance at a closing is included in the title premium. Attendance fees are not permitted unless:
 - The closing is more than 2 hours, OR
 - The closing extends beyond normal business hours, OR
 - Additional attendances are needed, OR
 - Travel arrangements and distance warrant
- Pick-up fees are permitted for **independent** closers provided notice is given to the seller or their attorney three days prior to closing.
 - The charge must be reasonable.
 - Pick-ups fees may be paid directly to the independent closer.
 - Staff Closers are not permitted to charge pick up fees.
 - Pick-up fees are not permitted on refinance transactions.