New York State Bar Association
NYSBA
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NYSBA Survey for the New York State Banking Department

The New York Superintendent of Banks is required, under Chapter 500 of the Laws of New York 2006, to conduct a study of residential mortgage closings where funds are not available for the closing (so-called "dry closings"). The Banking Department has contacted the Real Property Law Section to ask for reports from its members regarding the frequency of such dry closings, the type of lending institutions involved, and the other implications for the lack of funds at closing. To that end, the Title and Transfer Committee, at the request of the Section Chair, will be soliciting and assembling such information for delivery to the Banking Department. It is our hope that we can collect sufficient information to (1) have a discussion of the issue and some of the responses received during the meeting of the Title and Transfer Committee at the Association's Annual Meeting in January and (2) deliver a summary of such responses to the Banking Department by the end of January.

While the questions below are intended to focus responses, you should feel free to provide any information that you think would be relevant to the Banking Department's effort to fully understand the scope of the problem and what possible solutions might be considered. However, please first try to answer the questions below and then add additional comments if you wish. Where possible, be specific as to the type and name of lender involved in the closing.

The questions are as follows:

1) Your information:

Name:	
Firm name:	
City:	
State:	
How many Residential closings did you handle last year?	

2) In what counties did those closings occur? (please select all that apply)

- o Albany
- o Allegany
- o Bronx
- o Broome
- o Cattaraugus
- o Cayuga
- o Chautauqua
- o Chemung
- o Chenango
- o Clinton
- o Columbia
- o Cortland
- o Delaware
- o Dutchess
- o Erie
- o Essex
- o Franklin
- o Fulton
- o Genesee
- o Greene
- o Hamilton
- o Herkimer
- o Jefferson
- o Kings (Brooklyn)
- o Lewis
- o Livingston
- o Madison
- o Monroe
- o Montgomery
- o Nassau
- o New York (Manhattan)
- o Niagara
- o Oneida
- o Onondaga
- o Ontario
- o Orange
- o Orleans
- o Oswego
- o Otsego
- o Putnam
- o Queens
- o Rensselaer
- o Richmond (Staten Island)
- o Rockland
- o Saratoga
- o Schenectady
- o Schoharie
- o Schuyler
- o Seneca
- o Steuben
- o St. Lawrence
- o Suffolk
- o Sullivan
- o Tioga
- o Tompkins
- o Ulster
- o Warren
- o Washington
- o Wayne
- o Westchester
- o Wyoming
- o Yates
- o Other (please specify)

If you selected other, please specify:

3) How many times in the past year have you personally experienced, or have your associates or paralegals experienced dry closings where funds where not available at the time of closing?

4) In those situations, what type of Lenders were involved?

	Lenders	Do they operate through a local mortgage broker?		
	Select all that apply	Yes	No	Unknown
In-State Bank				
Out-of-State Bank				
In-State Non-Institutional Lender				
Out-of-State Non-Institutional Lender				
Non Bank Lender				
Other (Identify below)				

5) If you selected "Other" above, please identify the type of Lender:

6) In how many of those situations, was there a local attorney, closer or escrow agent involved in the transaction to whom funds could have been wired in advance? (please enter a number)

7) Have you experienced situations where the lender has no contact locally and you are asked to be their local attorney for the transaction and required to prepare the loan documents, close the loan and return the package to the lender before funding will occur?

Yes No

Additional comments:

8) Have you experienced any problems with this type of arrangement?

Yes No

Additional comments:

9) Is it your general experience that lenders will not wire funds until they have received copies of all of the loan documents?

Yes No

Additional comments:

10) If that is so, what is the usual delay after delivery of those loan documents before funds are available to complete the transaction?

- o 1-3 hours
- o 4-6 hours
- o 7-12 hours
- o Other (please specify)

If you selected other, please specify:

11) Is it your general experience that Lenders will not wire funds until they have received a fully executed and complete HUD-1 Settlement Statement?

Yes No

12) If that is so, what is the usual delay after delivery of the HUD-1 before funds are available to complete the transaction?

- o 1-3 hours
- o 4-6 hours
- o 7-12 hours

o Other (please specify)

If you selected other, please specify:

13) In those situations where you experienced “Dry Closing” problems was a closer present at the closing?

Yes No

Additional comments:

14) If yes, please identify the type of closer:

o Local attorney
o Out-of-Area attorney
o Licensed Title Company closer
o Mortgage Broker
o Settlement Company Agent

15) What solutions would you suggest to address this problem?

16) Would the suggested solution above be requiring delivery of funds to a local contact the day preceding closing?

Yes No Not Sure

17) If there is a local contact, should that local contact be a licensed attorney?

Yes No Not Sure

18) What is the frequency with which the funds are presented when available in a form other than a bank check or an attorney trust account check, such as a corporate check drawn on the local closer?

19) Please provide examples of the types of lenders involved.

- o In-State Bank
- o Out-of-State Bank
- o In-State Non-Institutional Lender
- o Out-of-State Non-Institutional Lender
- o Non Bank Lender
- o Other (please specify)

If you selected other, please specify:

20) What other problems have you personally experienced, other than delay in funding, resulting from dry closings?

Thank you for your participation.

Please return this survey to: New York State Bar Association, ATTN: Connie Schin, One Elk Street, Albany, NY 12207 or fax to: 518.487.5517 or email: cschin@nysba.org.