REAL PROPERTY LAW SECTION
SUMMARY OF RESULTS OF SURVEY ON DRY CLOSINGS
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RPLS Study of Dry Closings. The New York Superintendent of Banks was required, under Chapter 500 of the Laws of New York 2006, to conduct a study of residential mortgage closings where funds were not available for the closing (so-called "dry closings"). The Banking Department contacted the Real Property Law Section (RPLS) 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 RPLS Chair, solicited and assembled that information. The RPLS had 5,158 members at the time. 3,697 members having email addresses were invited to participate. Respondents took the survey in the 19 day period from January 23 to February 10, 2007. 332 completed responses were received.

2. Superintendent of Banks Report. The Superintendent of Banks submitted a 10 page Report to the Governor and the Legislature, dated July 13, 2007, which described surveys by the RPLS, N.Y.S. Association of Realtors and the N.Y.S. Bankers Association. It concluded that: (1) Dry closings do not comprise a significant portion of residential real estate closings; (2) The Many problems arise with the involvement of multiple parties and geographically remote and/or specialty lenders; (3) Lenders based outside of New York expect that a notarized closing is permitted and that they may receive signed closing documents prior to making funds available; (4) there is a clear difference in proper closing between closings in bank settings and non-bank settings; (5) failure to consummate a proper closing is due broadly to a lack of knowledge by participants in non-bank closings. Department stated that it would not draw andy final conclusions or take any specific regulatory actions at that time. It recommended the development of a more comprehensive survey and research tool, to be completed by December 2007.

At this time it does not appear that the Banking Department will take further action unless urged to do so by the RPLS or others.

3. The following is a summary of the results of the RPLS survey:

1. How many residential closings did you handle last year?

Quantity of Closings	Frequency	Percent
(skipped)	13	4.1%
0	3	0.9%
1-25	72	22.8%
26-50	74	23.4%
51-75	28	8.9%
76-100	45	14.2%
101-125	6	1.9%
126-150	13	4.1%
151-175	5	1.6%

176-200	13	4.1%
201-	44	13.9%
Total	316	100%

Total quantity of closings: 52,141

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

New York	153	(46.1%)	Dutchess	43	(13.0%)
Nassau	151	(45.5%)	Albany	37	(11.1%)
Queens	139	(41.9%)	Saratoga	37	(11.1%)
Suffolk	124	(37.3%)	Ulster	31	(9.3%)
Kings	116	(34.9%)	Schenectady	30	(9.0%)
Westchester	100	(30.1%)	Rennselaer	29	(8.7%)
Bronx	69	(20.8%)	Putnam	24	(7.2%)
Richmond	55	(16.6%)	Sullivan	22	(6.6%)
Rockland	54	(16.3%)	Monroe	20	(6.0%)
Orange	47	(14.2%)	[had the most over 5%]		

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?

Quantity of Closings	Frequency
(skipped)	16
0	53
1-09:	128
10-19:	44
20-29:	29
30-39:	12
40-49:	8
50-59:	12
60-69:	3
70-79:	4
80-89:	1
100-109:	7
150-159:	3
250-259:	2
	322

Total dry closings: 5,140
Percentage of closings that were dry: 5,140/52,141 = 9.85%

4. In those situations, what type of lenders were involved?

Lender	Select all that apply	Operate through local mortgage broker?		
		Yes	No	Unknown
In-State Bank	40.4%	67.1%	13.6%	19.3%
Out-of State Bank	67.2%	76.6%	5.0%	18.5%
In-State Non-Inst'l	19.0%	71.4%	7.9%	20.6%

Out-of State Non-Inst'l	28.9%	67.7%	15.1%	17.2%
Non Bank Lender	12.0%	54.3%	15.2%	30.4%
Other	1.5%	28.6%	42.9%	28.6%

5. If you selected "other" above, please identify the type of lender.
Federal Credit Union, at all times through mortgage brokers, NY HDC, internet mortgage lender, etrade.

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)

Could get wire	Frequency
(skipped)	62
0	12
1-9	121
10-19	38

Could get wire	Frequency
20-29	29
30-39	12
40-49	7
50-59	11
60-69	3
70-79	4
80-89	1
90-99	1
100 -	21
Total	322

7. Have your 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: 196 (64.1%)
No: 110 (35.9%)

8. Have you experienced any problems with this type of arrangement?
Yes: 135 (55.6%)
No: 108 (44.4%)

9. Is it your general experience that lenders will not wire funds until they have received copies of all of the loan documents?
Yes: 116 (38.4%)
No: 186 (61.6%)

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

1-3 hours: 116 (52.5%)
4-6 hours: 52 (23.5%)
7-12 hours: 13 (5.9%)
Other: 40 (18.1%)

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: 187 (61.3%)
No: 118 (38.7%)

12. If that is so, what is the usual delay after delivery of the HUD-1 before funds are available to complete the transaction?
1-3 hours: 141 (65.3%)
4-6 hours: 34 (15.7%)
7-12 hours: 10 (4.6%)
Other: 31 (14.4%)

13. In those situations where you experienced "Dry Closing" problems was a closer present at the closing?
Yes: 250 (94.7%)
No: 14 (5.3%)

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

Local attorney:	188 (56.6%)
Licensed Title Company closer	73 (22.0%)
Settlement Company Agent	72 (21.7%)
Out-of-Area attorney:	52 (15.7%)
Mortgage Broker	4 (1.2%)

15. What solutions would you suggest to address this problem?
[suggested solutions listed on pages 33-43]

16. Would the suggested solution above be requiring delivery of funds to a local contact the day preceding closing?
Yes: 222 (81.0%)
No: 30 (10.9%)
Not sure: 22 (8.0%)

17. If there is a local contact, should that local contact be a licensed attorney?
Yes: 250 (87.7%)
No: 8 (2.8%)
Not sure: 27 (9.5%)

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?

[Various answers on pages 44-45]

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

In-State Bank:	100 (30.1%)
Out-of-State Bank:	165 (49.7%)
In-State Non-Inst'l:	55 (16.6%)
Out-of-State Non-Inst'l:	83 (25%)
Non Bank Lender:	39 (11.7%)
Other:	6 (1.8%)

20. What other problems have you personally experienced, other than delay in funding, resulting form dry closings?
[various answers on pages 53-63]