



Retention of Title Records Training

IL Statute and IDFPR guidance

The Illinois Title Insurance Act requires title agents to maintain certain records for at least 7 years after issuance of the corresponding title insurance policy. Section 215 ILCS 155/21.3 provides that “evidence of the examination of title, if any, and determination of insurability for business written by a title insurance company or its title insurance agent ... shall be preserved and retained by the title insurance company or its title insurance agent for as long as appropriate to the circumstances, but in no event less than 7 years after the title insurance policy has been issued ... or as provided by applicable federal law.”

FNF Agency Contract

FNF currently requires its full-service agents to maintain all required records for the state-mandated duration of time and provide records to FNF in a timely manner upon request. These obligations are imposed through FNF’s standard written agency agreement, which also grants FNF the right to terminate the agreement of any agent that fails to comply with applicable record retention requirements.

Consistent with Illinois state law, our standard title insurance agency agreement requires title agents to prepare, preserve, and maintain a separate title file “containing all documents upon which Agent relied to make its determination of insurability, including, but not limited to: affidavits, maps, plats, lien waivers, surveys, title reports, searches, examinations, and work sheets, together with a copy of each commitment, policy, endorsement and other title assurance issued.” Such records “shall be preserved in accordance with applicable State document retention requirements, or in the case of a legal hold order, in accordance with instructions of Principal.”

Federal guidance

§1026.25 of Regulation Z provides Federal record retention requirements under the TILA-RESPA Integrated Disclosure Rule. There are three significant record retention requirements under the Rule:

- 1) A creditor must retain copies of the Closing Disclosure (and all documents related to the Closing Disclosure) for five years after consummation.
- 2) The creditor, or servicer if applicable, must retain the Escrow Closing Notice and the Post-Consummation Partial Payment Policy disclosure for two years. These requirements are derived from RESPA (Regulation X).
- 3) Creditors must maintain “evidence of compliance” with the Integrated Disclosure to meet provisions of Regulation Z. While not very specific, this should include the Loan Estimate forms and all documents related to the Closing Disclosure.

Regulations X and Z permit, but do not require, electronic record-keeping. These records can be maintained by any method that reproduces disclosures and other records accurately, including computer programs.

Records required to be maintained

FNF agents must maintain all documents upon which agents relied to make its determination of insurability, including, but not limited to:

- affidavits,
- maps,
- plats,
- lien waivers,
- surveys,
- title reports,
- searches,
- examinations,
- work sheets, and
- copies of each commitment, policy, endorsement and other title assurance issued

Communications

FNF expects that all its agents take the requirements for records retention under state law and our agency agreements seriously. Statutorily required records must be available for regulators to review upon request. Additionally, both FNF and the Illinois Department of Financial and Professional Regulation expect that full-service agents will require the attorney agents they engage to likewise retain required records for the state mandated duration of time.

During routine audits of our agents, FNF will review agents for records retention compliance. If FNF finds during an agency audit that the agent has not maintained files properly, it may make recommendations in its audit report that the agent improve its file maintenance procedures.

Failure to comply with both Illinois and FNF requirements regarding records retention may result in adverse consequences, including termination of the agency relationship with FNF.

Questions

If you have any questions about these requirements or what documents are expected to be retained, please contact castleconnectsupport@ctt.com