

July 9, 2018

## **NEW YORK STATE SUPREME COURT ANNULS STATE TITLE INSURANCE REGULATIONS**

To Our Clients and Friends:

On July 5, 2018, the Manhattan Supreme Court overturned New York State Insurance Regulation 208. The case involved a challenge by the New York State Land Title Association (NYSLTA) to the New York State Department of Financial Services' (DFS) recently enacted sweeping regulation (Insurance Regulation 208) that would have barred the entire title insurance industry in New York State from engaging in traditional industry marketing practices ranging from a title insurance agent taking a real estate attorney to lunch to hosting an office party. The regulation also would have imposed an across-the-board, industry-wide 5% rate reduction on title insurance premiums, forbid certain title insurance agents from receiving pick-up fees and gratuities, and capped fees charged by the industry for certain ancillary services at 200% of the cost of the service to the title company.

Gibson Dunn represented the industry in bringing an Article 78 action challenging these restrictions as contrary to DFS's governing statutes, arbitrary and capricious, violations of and due process, among other claims, and challenging the entire regulation as outside the scope of DFS's authority. Gibson Dunn also argued that Insurance Regulation 208 was economically destructive to the industry, and would lead to small businesses closing and people losing their jobs, and was not justified by any record of misconduct by the industry.

After briefing and argument, Justice Rakower of New York State Supreme Court issued a detailed decision (click [HERE](#)) finding in NYSLTA's favor on each of the four specific provisions it was challenging, and then struck down Insurance Regulation 208 in its entirety. The court found that DFS had exceeded the scope of its statutory authority and the Legislature never intended for DFS to prohibit "title insurance corporations from marketing themselves for business – an absurd proposition." The Court also found the various arguments made by DFS in defense of the regulation to be "irreconcilable and irrational," and "devoid of economic or other analysis" justifying the restrictions imposed by the agency.

Gibson Dunn & Crutcher LLP partner Mylan Denerstein and associates Akiva Shapiro and David Coon represented NYSLTA in this action and are available to answer questions regarding the decision.

# GIBSON DUNN



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