

**Over-Priced Closing Costs:  
*High Priced Title Insurance Cost  
New York State Real Estate  
Buyers \$155.3 Million in Excess  
Premiums and Fees in 2015***

June 2016



## Over-Priced Closing Costs:

### *High Priced Title Insurance Cost New York State Real Estate Buyers \$155.3 Million in Excess Premiums and Fees in 2015*

#### Executive Summary

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Buyers of New York real estate – including homebuyers, investors and others – spent an estimated \$155.3 million in excess title insurance premiums and related fees in 2015 despite the ready availability of significantly lower cost options. Much of the excess is due to broad misunderstandings and misinformation about how title insurance rates and fees are set and whether lower cost options are available.

Better information and more active shopping among buyers, attorneys and lenders could dramatically reduce cost across virtually every type and size of real estate transaction – from starter homes to the largest commercial transactions – in every city and town. These conclusions are based on an exhaustive statistical analysis of 182,487 individual real estate transactions in New York State. The survey included nearly all real property transactions in 2015.<sup>1</sup>

Unlike other major expenses in buying and selling real estate – including broker's fees, mortgages and lawyers' fees – buyers are often unaware that they have the opportunity to shop for alternatives and that shopping can significantly lower closing costs. Attorneys – who often end up making the selection – frequently operate under the misconception that rates are set by law and therefore fail to pick a low cost provider on their clients' behalf.

This failure to select lower cost options cost New Yorkers an average \$851 per transaction or 27.1% of the average cost of title insurance and related fees in 2015. For larger transactions, the forgone savings cost can be well in excess of \$100,000. The unnecessary expense is spread across all property types and values. For the 89,096 transactions under \$200,000 in 2015, New Yorkers lost out on projected average per transaction savings of 33.1% or \$595 – money that could have gone toward home improvements or even increasing their down payment. This lost savings represented 1% of the purchase price on these homes. For more expensive properties,

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<sup>1</sup> Transactions under \$10,000 were excluded from the analysis due to their de minimis size. Including these transactions would have further increased the total estimate of unnecessary closing costs.

such as those over \$1 million, New Yorkers lost out on an average of \$2,781.

Lower cost options are readily available and easy to select. Attorneys, lenders and loan officers can easily recommend lower cost options to their clients, while homebuyers and commercial purchasers have the legal right to select their own title insurance provider even in the face of alternative recommendations.

Other key findings of the study included:

- High cost title insurance premiums and fees impacted residents of every county. While the largest potential savings were in Manhattan (\$28.1 million) and Brooklyn (\$15.2 million), the savings in upstate counties could be nearly as large: Erie County was 5th in excess title costs (\$9.4 million). Monroe and Onondaga Counties also made the top ten.
- Buyers in twenty-five separate counties, stretching across the entire state, each spent at least \$1 million more than necessary in excess title-related closing costs in 2015. Savings would have exceeded \$500,000 in 49 counties.
- The median purchase price of real estate was \$206,000 in 2015. The average price was \$768,050.
- The study included purchases totaling \$140.2 billion, reflecting the vast majority of real estate transactions in New York State in 2015.
- Estimated title insurance expenditures for purchases – including both premiums and fees – was \$817.0 million. This is only a portion of the total since the study did not include the significant premiums and fees attached to new loans and refinancing transactions.

## [Background on Title Insurance](#)

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Title insurance protects real estate buyers and lenders against defects in title, liens, judgments and other matters that could impact their ownership of the property. It is required on most real estate transactions and is generally purchased even when not strictly required. As a result, it becomes a significant contributor to real estate closing costs.

Title insurance is an unusual form of insurance in that it is a) single premium (i.e., you pay the premium only once – usually when you purchase the property or receive the loan – even though the policy has no expiration date), and b) protects the insured against future losses that arise from risks that occurred *before* they purchased the policy. Other forms of insurance only protect against risk that occur *after* the policy is purchased, require periodic premiums (e.g., annual) and are subject to cancellation or non-renewal.

Because of the fact that the policy is protecting against risks that arise before the policy is issued, the underwriting process involves detailed research into the property's title, liens, judgments against the parties and other factors that could impact the buyer's and lender's right to the property. Other forms of insurance use statistical analysis, combined with information on the specific policy to *predict the likelihood* of a future loss.

The two most common types of title insurance policies are an "owner's policy" and a "lender's policy." The first is an optional – but very common in New York – form of coverage that protects the person buying the property and their ownership. Lender's title insurance protects the lender against problems with the title that would impact their collateral. Virtually all mortgage lenders require buyers to obtain a lender's policy if they are receiving a mortgage.

Lender's title insurance does not protect the owner's investment in the home. The lender's title insurance policy only covers claims that impact the lender's loan. An owner's title insurance policy protects a homeowner's financial investment in a property for as long as they have an interest in the property.

Title insurance is one of the myriad of closing costs associated with buying a home. Compared to the appraisal, the inspection, survey, loan origination fee and attorney's fees, title insurance and related fees usually represent a significant share of real estate closing costs.

### **Title Insurance Cost**

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There are two major components to the cost of title insurance: premiums and title-related fees. Both can be significant expenses, but a smart property buyer, attorney or lender can reduce the cost of both the premium and the fees.

Contrary to broad misconceptions, New York title insurance rates are neither set by law nor fixed by regulation. In fact, although they rarely do, title insurers are free to file independent rate schedules with the New York Department of Financial Services ("DFS").<sup>2</sup> If approved by DFS, they can then charge the rates they set. Fees are largely unregulated and set by each independent title agent.

Despite this, nearly all title insurers in New York – operating under an anti-trust exemption<sup>3</sup> –

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<sup>2</sup> Department of Financial Services *Homeowners Resource Center: Title Insurance*  
[http://www.dfs.ny.gov/consumer/homeown/home\\_title\\_ins.htm](http://www.dfs.ny.gov/consumer/homeown/home_title_ins.htm)

<sup>3</sup> See The McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, also known as Public Law 15.

collectively file and use a single set of rates. This uniformity of rates among the vast majority of insurers contributes to the false perception that rates are set by law or regulation. Indeed, even deeply experienced attorneys and real estate experts often hold this misconception.

It is, however, possible for companies to break with industry practice and request approval of a different rate structure. While this is extremely rare, there are companies offering lower rates for commercial and residential transactions.<sup>4</sup>

Unlike premiums, which are set by the insurer (or “underwriter”) subject to regulatory approval, the fees – which can be larger than the total premium on smaller transactions – are largely unregulated and set by either the individual title insurance agent or the underwriter (for policies issued without an agent).

Here, again, there are companies that have either reduced or eliminated title-related fees on New York real estate transactions. To calculate the potential savings in title insurance cost, we used a provider with both lower premiums and lower fees (see Methodology section).

## Findings by County

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Property buyers in every town, city and county in New York unnecessarily spent money on high-priced title insurance and title-related fees. While the county level savings range from a low of \$128,959 in Hamilton County to a high of \$28.1 million in Manhattan (New York County), 25 different counties had more than \$1 million in needless title-related closing costs and 49 had more than \$500,000.

The variation across counties was driven by both number of transactions and the distribution of transaction sizes in each county. For example, New York County (Manhattan) had 8,270 transactions totaling \$63.2 billion compared to only 201 transactions totaling \$35 million in Hamilton County. **Purchasers of properties with similar values can expect similar savings across most counties** subject to some variation between upstate and downstate regions.

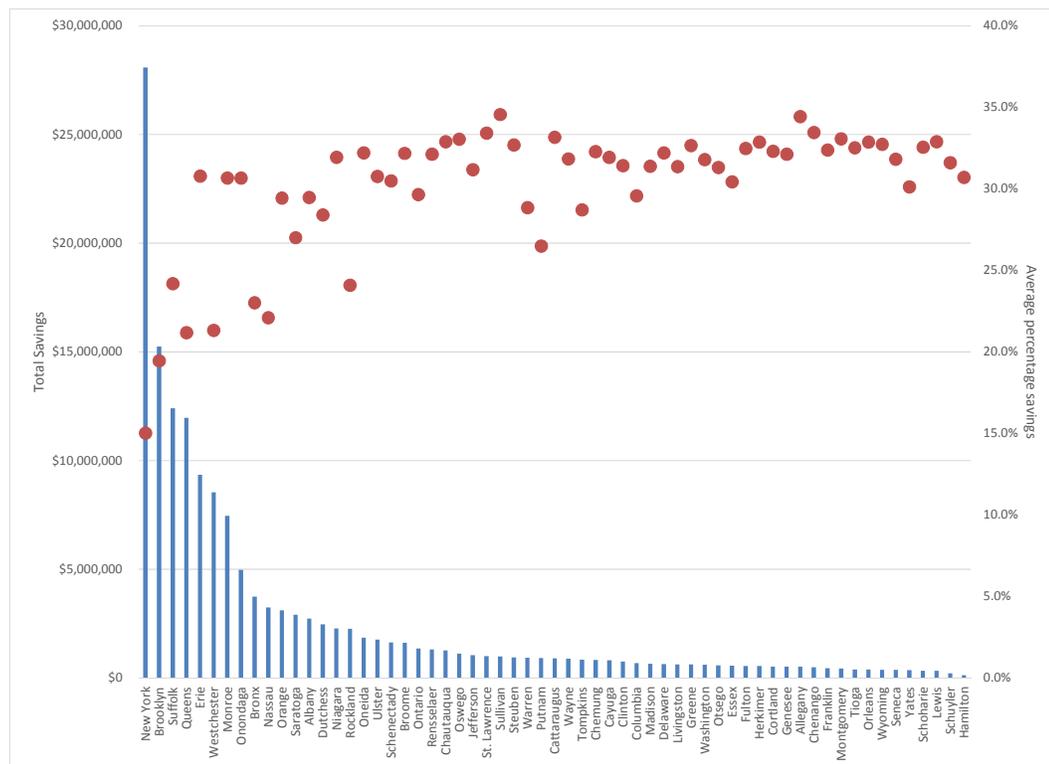
While larger transactions offer greater potential savings in dollars on title insurance costs, the *percentage* savings on small transactions is higher. This is driven by the two components of title insurance expense: premium and fees. Premium increases with transaction size. The increase is linear within preset bands, although the marginal premium rates decline with higher bands.

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<sup>4</sup> E.B. Solomont, “Inside the Title Insurance Cartel: How the industry became the bulletproof behemoth it is today,” *The Real Deal*, March 24, 2016.

Industry normative fees, however, generally do not vary by transaction size.<sup>5</sup> For the analysis we calculated the lower cost option using the rate and fee structures from one title insurer that has both filed lower rates and eliminated nearly all categories of fees. As a result there is a largely-fixed per-transaction savings from reduced fees – which represents a larger percentage of total cost on small transactions – plus the savings on premium that is a constant percentage regardless of transaction size.

Exhibit 1: Annual Total Needless Closing Costs by County

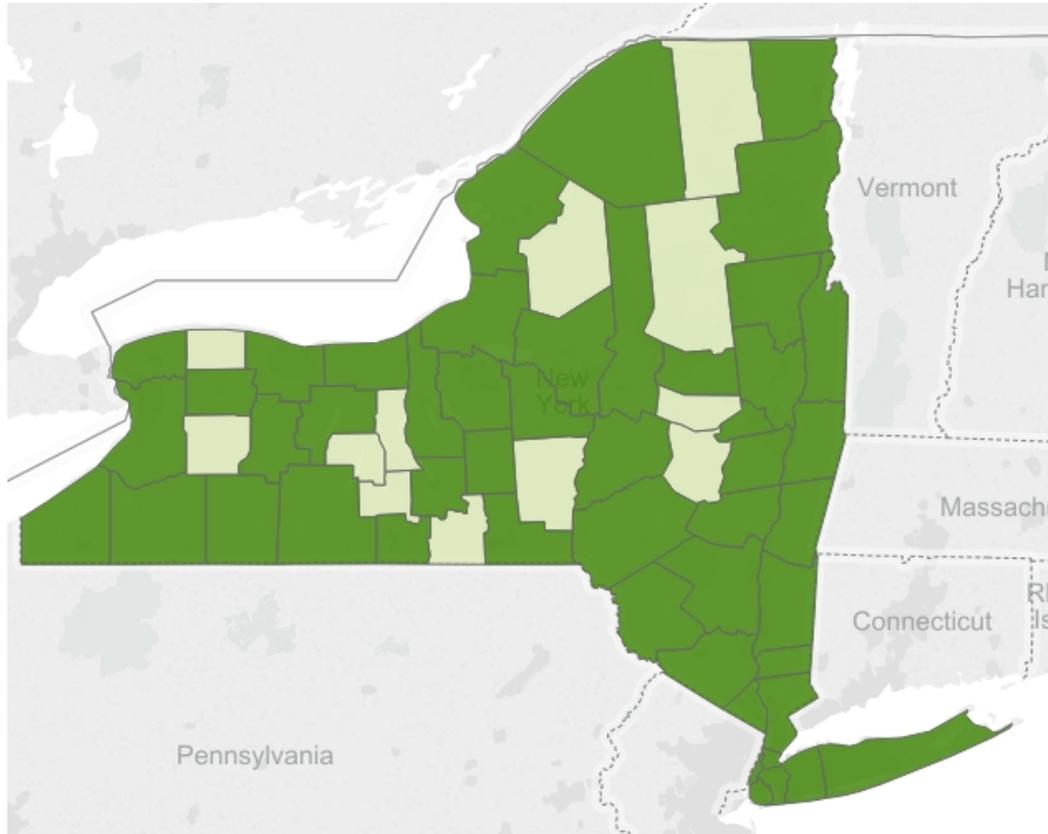


Despite the variation in property values and transaction volumes across counties, property buyers in every county – from Suffolk on the tip of Long Island to the shores of Lake Erie are wasting substantial amounts of money on high cost title insurance. **Of the 61 counties examined, buyers in every county spent excess money. Buyers in 49 counties paid at least \$500,000 more than necessary for title insurance.**

<sup>5</sup> While fees do not generally vary by transaction size, they do vary by region and by certain other transaction characteristics, such as number of parties. OneTitle has eliminated nearly all common fees, resulting in both substantial savings and lower variation.

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## Exhibit 2: Counties with At Least \$500,000 of Total Needless Closing Costs



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### Small Home Buyers are Particularly Hard Hit

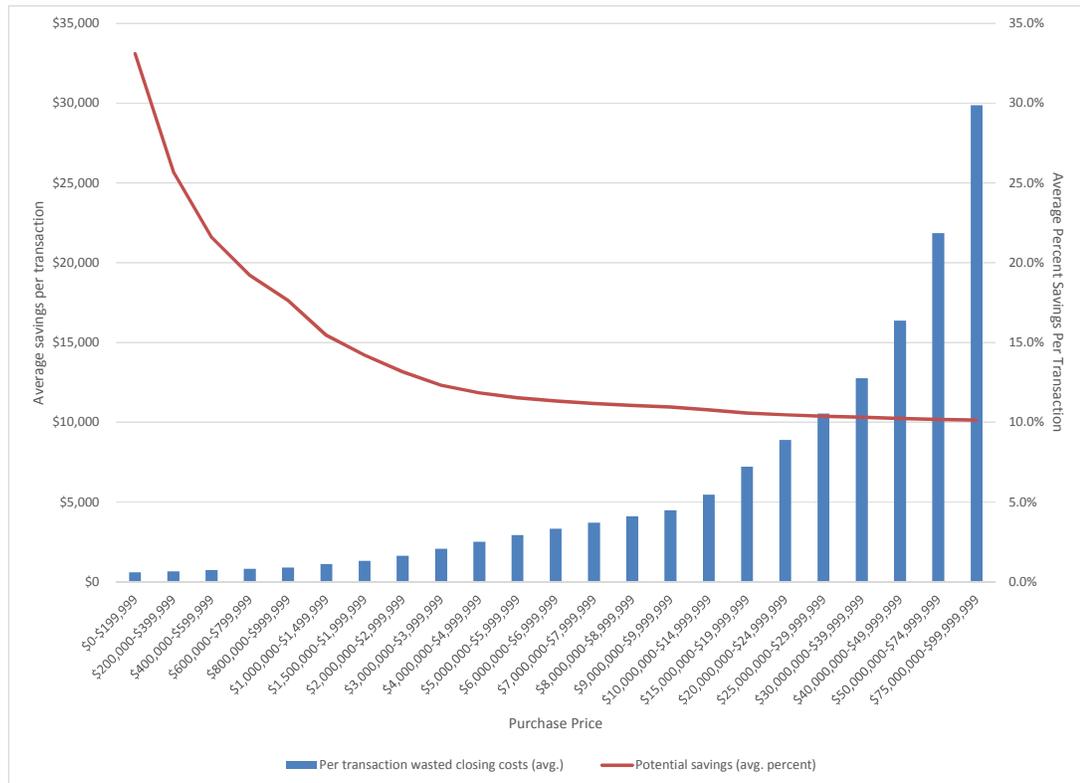
While higher than necessary title-related closing costs are painful for all New York real estate buyers, they can be particularly painful for New Yorkers buying less expensive homes since a) title expenses as a percent of the purchase price are dramatically higher for less expensive properties and b) these buyers often have more limited resources.

For example the average buyer of a property costing less than \$200,000 will pay a full 3.0% of the purchase price in title-related costs if they use a typical provider. Shopping for title insurance, however, can cut that expense by 35%, giving buyers an additional 1% toward a down payment, renovations or simply savings post-closing.

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Buyers of more expensive properties pay more for title insurance – and, with traditional providers, lose out on larger savings – despite the fact that the cost represents a smaller percentage of the total cost of buying a home. For the largest real estate transactions, the savings alone can exceed \$100,000.

Exhibit 3: Needless Closing Costs by Transaction Size



### Methodology

The study included all 182,487 real estate purchase transactions recorded in 61 of New York’s 62 Counties. The dataset intentionally excluded transactions with de minimis consideration.<sup>6</sup> Data was gathered from New York State real property tax records for transaction outside New York City and from ACRIS for transactions in New York, Kings, Queens and Bronx counties. For each individual transaction, the authors calculated an estimated cost of title insurance using both industry standard rates and fees and, for comparison, rates and fees charged by OneTitle National Guaranty Company, Inc. For both cases, the authors assumed 80% financing and the simultaneous issue of both an owners and lenders title insurance policy.

<sup>6</sup> De minimis consideration is defined as less than \$10,000.

For the status quo cost, the authors used the rates collectively filed and used by all major title insurers in New York.<sup>7</sup> Industry standard fees were generated based on a survey of fees charged by a sample of New York title insurance agents, including a sample of both actual title bills and fee schedules disclosed publically. For each fee category, an average of the available data points was used to generate an average fee level. Where a title agent provided a range for a given fee, the midpoint of the range was used. The included fees were: title search fees (only in those counties where searches are not already included in the title premium), a tax search, bankruptcy search (two names), Patriot Act search (two names) overnight or courier expense, survey inspection, escrow service fee and municipal searches.

For comparison and to calculate the magnitude of the potential savings, the authors then calculated the title insurance premium and fees that would have been charged by OneTitle using OneTitle's lower filed rates and lower fee structures. This was done for each of the 182,487 transactions.

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<sup>7</sup> Rates are filed by the Title Insurance Rate Service Association ("TIRSA"), a rate service organization representing all major title insurers operating in New York. TIRSA members work together to file a single set of rates used by all TIRSA members.