



January 9, 2023

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Unfair or Deceptive Fees ANPR, R207011

To Whom It May Concern:

The American Land Title Association (ALTA)¹ believes companies that mislead customers about their pricing hurt both consumers and fair competition. While ALTA supports efforts to address bad actors, the Federal Trade Commission (FTC) needs to provide a clear and concise definition of a so-called “junk fee” that industry can easily follow and use to make decisions. Having definitive guidance and consistent market standards is critical so industry can continue helping consumers while ensuring they understand the pricing of any services provided.

We appreciate that the FTC is going through a full Administrative Procedures Act rulemaking before taking any action on areas of concern. Based on our members’ experiences, the most important step the FTC can take to improve consumer outcomes is to use the formal tools available to draft regulations and issue clear and reliable guidance. The “junk fee” definition in the advanced notice of proposed rulemaking (ANPRM) is much too broad and could benefit from clearer examples and greater specificity in the next step of the rulemaking process.

ALTA is the national voice of the title insurance and settlement services industry. We work with consumers at the most critical juncture of their financial lives, closing on their home purchase and mortgage. ALTA members are the people at the closing helping to answer consumers’ questions. The title insurance industry works hard to help communicate and educate consumers about the homebuying process and the common fees in a real estate transaction.

¹ The American Land Title Association (ALTA) is the national voice of the title insurance and settlement services industry. We work with consumers at the most critical juncture of their financial lives, closing on their home purchase and mortgage. Title insurance professionals are the people at the closing helping to answer consumers’ questions. The title insurance industry works hard to educate homebuyers about every step of the process and explain why title insurance is needed to protect their investment in the property.

The FTC Needs to Provide a Clear Definition of a “Junk Fee”

The FTC’s definition is too vague and subjective for industry to follow. As written, it could be read to capture a host of legitimate and regulated fees for important and valued services.

To help consumers and set standards for industry, it would be beneficial for the FTC to provide a robust set of clear examples of what would and would not fall under a “junk fee” definition. The FTC should consider a catch all exception for any fee that is already regulated by a state or the federal government.

In the next step of the rulemaking process, the FTC should note that a fee is not necessarily a “junk fee” just because it has different names in different parts of the country. In real estate closings, there are examples where the exact same service has a different name due to local custom and practice. Since the differently named fees are for a legitimate service, they should not be deemed a “junk fee” merely due to a different naming convention at the local level.

It is also important for the FTC to provide an updated definition to clarify that if a consumer chooses an additional service or benefit as a part of a transaction, any fees that occur as a result of this selection are considered legitimate. Often, this comes as a last-minute request by a consumer. In the title insurance industry, most last-minute fees occur if a circumstance changes and thus the consumer would be harmed by providers declining the change.

ALTA provided similar feedback to the Consumer Financial Protection Bureau (CFPB) in March of 2022, when the Bureau put out a Request for Information (RFI) on fees imposed by providers of consumer financial products or services. We worked closely with the CFPB during the development and implementation of the Truth in Lending Act (TILA) and RESPA Integrated Disclosures (TRID). All fees charged by title companies are disclosed to the consumer on both the Loan Estimate and Closing Disclosure.

Title Insurance is Highly Regulated and Focused on Consumer Education

The business of title insurance is comprehensively regulated by state regulatory agencies (commonly the state insurance department), the CFPB through RESPA, and where applicable, the state bar/supreme court rules. The regulatory structure of the title insurance industry provides robust protection for consumers and ensures fees are adequately disclosed.

Real estate transactions are extremely local – varying from state to state and even city to city. The state department of insurance oversees the industry’s practices and rates, and examines them to ensure they are not excessive, inadequate, and unfairly discriminatory.

While title insurance premiums are regulated at the state level and thus vary by state based on their regulatory requirements, they generally range from 0.5%-1% of the purchase price of the home. Unlike other forms of insurance, title insurance protects against risks in the history of a property’s ownership.

This backward-looking nature, in addition to the one-time fee paid at closing, makes it prudent that most of the focus of title insurance underwriting is on loss prevention prior to closing. This underwriting is typically done by local agents or direct operations and involves a labor and time-intensive search and examination of public land records.

Protecting consumers is at the center of the title insurance industry’s core values: to lead,

deliver, and protect. This cultural compass drives the industry to focus on business practices to do just that. Over the last decade, the title insurance industry has worked closely with federal agencies and industry partners to ensure consumers are treated fairly and honestly while ensuring that land transfer is accurate, swift, and secure.

In 2012, ALTA created the Title Insurance and Settlement Company Best Practices to develop a common language for the ways title companies protect real estate professionals, lenders, and consumers. This tool helps the industry and its customers understand the policies and procedures for a safe closing experience and compliance under consumer protection laws. The seven pillars of ALTA Best Practices revolve around the issues of: licensing, accounting, personal information, compliant settlement procedures, title policy delivery, insurance liability, and consumer complaints responsiveness.

ALTA also has developed a consumer education campaign to help homebuyers understand the closing process and the benefits of title insurance. Through our consumer education portal (www.homeclosing101.org), we host a variety of resources to help consumers shop for title insurance, understand the steps in a closing, and review common terms and fees.

Conclusion

While ALTA supports the FTC's goals to root out practices that mislead consumers about their charges, we also strongly believe that the FTC should provide a specific and concise definition of a "junk fee" in the next step of the rulemaking process. Detailed guidance is important so industry has clear rules of the road and can set appropriate expectations for consumers.

Title insurance is comprehensively regulated, all fees charged by title companies are disclosed to the consumer beforehand, and the industry works hard to ensure that consumers are well-educated.

ALTA appreciates the opportunity to submit a comment to the FTC on this issue and is happy to serve as a resource for any questions that may arise. Please reach out to Steve Gottheim, General Counsel, at sgottheim@alta.org or Chris Morton, Senior Vice President of Public Affairs and Chief Advocacy Officer, at cmorton@alta.org with any inquiries.

Sincerely,

Chris Morton

Chris Morton
Senior Vice President of Public Affairs & Chief Advocacy Officer
American Land Title Association