See Comments below from Birny Birnbaum (Center for Economic Justice).

The Center for Economic Justice appreciates the time and commitment of working group members to developing information to empower title insurance consumers. We cannot support or endorse the current work product for several reasons. We also agree with the comments of Brenda Cude. While clearly based on good intentions, the proposed "How to Buy Title Insurance" reflects many of the failings of information and disclosures for insurance consumers developed at the NAIC and which have been identified by consumer representatives and experts in crafting effective information and disclosures. The problems with the proposed document include:

1. No clearly identified and specific market problem that is being addressed. The proposed document provides discussion of a broad set of topics related to real estate purchase and refinance transactions, of which title insurance and settlement services provided by title insurers or title agents are a subset. There are many resources available to consumers regarding the real estate closing process; it is unclear what role the working group envisions this document playing that is not currently being addressed by other regulatory agencies. The working group has not identified the specific problem to be addressed by this document. Consequently, there is no way to evaluate whether the document will achieve any particular goal.

2. No analysis of the markets for title insurance and settlement services informing the goals of or development of the document. The markets for title insurance and settlement services are not competitive for a variety of reasons. It is well known that title insurers and title agents market to real estate professionals who in in a position to refer the consumer paying for the title insurance. It is also well known that title insurers and title agents have often provided considerations -- sometimes legally through affiliated business arrangements and sometimes illegally through prohibited kickbacks -- as part of the marketing to the real estate professional "customers." Further, title insurance is a relatively small part of a larger purchase or refinance transaction. It is critical that information and disclosures intended to empower title insurance consumes must consider the nature of title insurance markets and the title insurance transaction. The proposed document does not do this. Rather, it seems to provide information to consumers as if the title insurance was a consumer good that consumers had time and interest to research.

3. No testing of the document with consumers to determine the effectiveness of the document. The era of simply producing information in a booklet for consumers and assuming it will be used by and empower consumers has long past. It is well accepted that consumer information and disclosures are as important a regulatory tool as rules and regulations. There has been no testing of this document with consumers. Based on our experience, we suggest it is highly unlikely a consumer will wade through such a lengthy document or complete the fill-in page for comparing prices of providers.

4. The era of providing information in a lengthy booklet is also long past. Consumers are overwhelmingly shopping, researching and seeking information online and through mobile devices. It is extremely unlikely that a consumer will review a dense 12 page document which is not designed for use with mobile devices. Again, the design of the product has not been informed by a specific analysis of the title insurance market and how consumers first learn about the need for title insurance and what the best way to make critical information regarding title insurance available to the consumer at that key point in time.

5. There has been no substantive analysis of how and when to get the
critical information to title insurance consumers. The working group has provided a document "Best Practices for Marketing a Title Shopping Tool to Consumers." Putting aside the fact that the proposed document is not a title shopping tool, the document is simply a list of ideas on how to distribute the document. This laundry list is not useful because the recommendations are very broad and without specific examples.

Further, there is no empirical support for any of the recommendations as an effective method of getting the document to consumers. Finally, the list fails to address the key issue of when in the real estate purchase or refinance process the consumer should or will get the key information.

In summary, CEJ appreciates the commitment of working group members to assisting consumers, but we recommend that working group members step back and review the BEST PRACTICES AND GUIDELINES FOR CONSUMER INFORMATION DISCLOSURES adopted by the NAIC and attached for your review. Some information is not better than no information if that some information is not crafted effectively and subject to evaluation.

Thank for your consideration

Best Practices
Consumer Disclosure