



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Patterson
Governor

Kermitt J. Brooks
Acting Superintendent

July 31, 2009

Question Presented:

May an attorney who also is a title agent lawfully charge an applicant for title insurance a reduced legal fee as an inducement to use the attorney's title agency to obtain insurance?

Conclusion:

No. An attorney who is also a title agent may not lawfully charge an applicant for title insurance a reduced legal fee as an inducement to use the attorney's title agency to obtain insurance, because such an inducement would violate N.Y. Ins. Law § 6409(d) (McKinney 2009).

Facts:

Your inquiry is of a general nature, without reference to particular facts.

Analysis:

Insurance Law § 6409(d) is germane to your inquiry and reads as follows

(d) No title insurance corporation or any other person acting for or on behalf of it, shall make any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant for insurance, or to any person, firm or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee or mortgagee of the real property or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business. Any person or entity who accepts or receives such a commission or rebate shall be subject to a penalty equal to the greater of one thousand dollars or five times the amount thereof.

Thus, a title insurance corporation or any other person acting for or on behalf of it is prohibited from, directly or indirectly, offering any applicant for insurance, any rebate of any portion of the fee, premium or charge, or give any consideration or valuable thing as an inducement for, or as compensation for any title insurance business.

The purpose of New York's anti-rebating and inducement provisions is to require an insurer or its duly appointed insurance agent to provide insurance in a nondiscriminatory manner to like insureds or potential insured, and to prohibit such insurer or producer from providing an insured or potential insured with any special benefit not afforded to other insureds or potential insureds. See McGee v. Felter, 75 Misc. 349 (Co. Ct. Kings Co. 1912).

Here, you ask whether an attorney who is also a title agent may lawfully charge an applicant for title insurance a reduced legal fee as an inducement for using the attorney's title agency to obtain insurance. The title agent acts for or on behalf of the title insurer. Providing reduced legal fees to title insurance applicants who use the attorney's title agency to obtain insurance constitutes the giving by the agent/attorney of "consideration or valuable thing as an inducement for...title insurance business," in violation of Insurance Law § 6409(d). In addition, such fee reduction constitutes a special benefit not afforded to other applicants who choose not to obtain title insurance from that attorney's title agency. See Circular Letter No. 9 (2009).

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. Marsh".

D. Monica Marsh
Supervising Attorney

A handwritten signature in cursive script, appearing to read "Alex Charap".

Alexander Charap
Legal Intern