

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES**

**PROPOSED NEW 11 NYCRR 35
(INSURANCE REGULATION 206)**

**TITLE INSURANCE:
TITLE INSURANCE AGENTS, AFFILIATED RELATIONSHIPS,
AND REQUIRED DISCLOSURES**

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 107(a)(54), 301, 2101(k), 2113, 2119, 2139, 2314, 2324, and 6409 of the Insurance Law, do hereby promulgate a new Part 35 of Title 11 of the Official Compilation of Codes, Rules, and Regulations (Insurance Regulation 206), to take effect on September 27, 2014, to read as follows:

(ALL MATERIAL IS NEW)

Section 35.1 Definitions.

For purposes of this Part:

(a) *Affiliated person* means a person who acts as an agent, representative, attorney, or employee of the owner, lessee, or mortgagee, or of the prospective owner, lessee, or mortgagee of real property or any interest therein, or such person's spouse, when the person or spouse directly or indirectly:

- (1) is a member, employee, or director of a title insurance agent or title insurance corporation;
- (2) owns any interest in a title insurance agent;
- (3) owns at least five percent of a title insurance corporation's securities or controls the title insurance corporation; or
- (4) is a subsidiary or affiliate of a title insurance agent or title insurance corporation.

(b) *Applicant or applicant for insurance* means the person for whom the purchase of the property that is the subject of the title insurance policy is financed, to whom a mortgage loan is made, or who owns or is purchasing the property or any interest therein, or a person who is an attorney-in-fact for such person.

(c) *Person* shall have the meaning set forth in Insurance Law section 2101(q).

(d) *Real estate settlement service* means any service that is provided in connection with a real estate transaction, including a title search, title examination, provision of title insurance commitments or certificates of title, title insurance, preparation of documents, services rendered by an attorney or a real estate agent or broker, origination of a mortgage loan (including the taking of a loan application or loan processing), and closing, or settlement.

(e) *RESPA* means the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. section 2601 et seq., as amended, and Regulation X, 12 C.F.R. Part 1024 et seq., as amended.

(f) *Significant and multiple sources of business* means title insurance business that a title insurance agent or title insurance corporation generates from non-affiliate, non-controlled or non-owner business sources that constitute a significant amount of the title insurance business transacted by the title insurance agent or title insurance corporation.

Section 35.2 Applications.

The forms of applications for licenses to act as a title insurance agent pursuant to Insurance Law section 2139 are prescribed as follows: individual and business entity.

Section 35.3 Change of contact information.

Every licensee shall notify the department of any change of business or residence address, telephone number, fax number, or email address within 30 days of the change.

Section 35.4 Affiliated business relationships.

(a) A title insurance corporation shall not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance corporation has significant and multiple sources of business. A title insurance agent shall not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance agent has significant and multiple sources of business.

(b) A title insurance agent or title insurance corporation shall not require an affiliated person to refer a specified amount of title insurance to the title insurance corporation or title insurance agent.

(c) No title insurance agent or title insurance corporation shall directly or indirectly provide compensation to an affiliated person that refers title insurance business to the title insurance agent or title insurance corporation except that:

(1) a title insurance agent or title insurance corporation may pay an affiliated person the fair market value for actual bona fide services rendered to the title insurance agent or title insurance corporation; and

(2) the affiliated person may receive a return on investment in the title insurance agent or title insurance corporation that is commensurate with that person's ownership interest in the title insurance agent or title insurance corporation.

(d) A title insurance agent or title insurance corporation shall not require an applicant for insurance to purchase any other good or service from such title insurance agent, title insurance corporation or an affiliate person as a condition to such applicant purchasing title insurance from such title insurance agent or title insurance corporation, and neither shall a title insurance agent or title insurance corporation require an applicant for insurance to obtain title insurance from such agent or corporation as a condition to purchasing any other goods or services from the title insurance agent, title insurance corporation or any affiliated person.

Section 35.5 Referrals by affiliated persons and required disclosures.

(a) Except as provided in subdivision (c) of this section, an affiliated person that directly or indirectly refers an applicant for title insurance to a title insurance agent or title insurance corporation shall, at the time of making the referral, provide the following disclosures pursuant to Insurance Law section 2113(d) in a separate writing to the applicant and obtain written acknowledgement of receipt from the applicant:

(1) that the affiliated person has a financial or other beneficial interest in the title insurance agent or title insurance corporation and is likely to receive a financial or other benefit as a result of this referral;

(2) that the applicant is not required to use the services of the title insurance agent or title insurance corporation to which the applicant is being referred, and that the applicant may shop around to determine whether the applicant is receiving the best services and the best rate for the title services;

(3) unless the affiliated person is licensed as a title insurance agent, that any money or other thing of value paid by the title insurance agent or title insurance corporation to the affiliated person is based on that person's financial or other beneficial interest in the title insurance agent or title insurance corporation and is not related to the amount of title insurance business that person refers to the title insurance agent or title insurance corporation; and that the payment of such money or other thing of value does not violate Insurance Law sections 2324 or 6409 or RESPA;

(4) that the affiliated person is not required to refer a specified amount of title insurance business;

(5) the amount or value of any compensation or other things of value that the affiliated person expects to receive in connection with the services to be provided by the title insurance agent or the title insurance corporation to which the applicant is being referred;

(6) an estimate of the cost or range of charges for the services of the title insurance agent or title insurance corporation, including, the title insurance premiums, fees and other charges; and

(7) that the affiliated person is not the sole source of business for the title insurance agent or title insurance corporation, and that the title insurance agent or title insurance corporation has significant and multiple sources of business.

(b) Except as provided in subdivision (c) of this section, the title insurance agent or title insurance corporation to which a referral is made shall be responsible for ensuring that the applicant for insurance received all disclosures that are required hereunder.

(c) A title insurance agent that represents an applicant in another capacity, including as an attorney, shall not be subject to the disclosure requirements set forth in subdivision (a) of this section, but shall advise the applicant that the applicant is not required to use the person as a title insurance agent.

Section 35.6 Disclosure of fees and other charges

(a) At the time of closing, a title insurance agent shall provide to the applicant, or the applicant's representative, a list of its title insurance fees, including discretionary or ancillary fees, along with any other separately identifiable service charge, in accordance with the title insurance agent's or title insurance corporation's fee schedule. All fees charged by the title insurance agent shall be in accordance with Insurance Law section 2119. The title insurance agent also shall disclose to the applicant, or the applicant's representative, the premium for the title insurance policy at the time of closing. If no title insurance agent is used, then the title insurance corporation shall provide the notices.

(b) Every title insurance agent and title insurance corporation shall, on its website, make its range of charges for title services publicly available and accessible in a manner that permits a policyholder or potential applicant to independently determine the applicable charges. If a title insurance agent does not have a website, then the title insurance agent shall post its range of charges for title services in its place of business and provide the range of charges to policyholders or potential applicants in a written document.

Section 35.7 Other disclosures to applicants.

(a)(1) A title insurance agent shall furnish a title insurance report to the applicant and the applicant's representative at least three days prior to the scheduled date of closing, provided, however, that if an applicant is represented by an attorney, then a title insurance agent shall furnish a title insurance report to the applicant's attorney unless the applicant also requests the title insurance report, in which case the title insurance agent shall furnish the report to both the applicant and the applicant's attorney.

(2) If a title insurance agent is unable to deliver a title insurance report at least three days prior to closing, then the title insurance agent shall document or require documentation of the reasons for the delay.

(3) The report shall display conspicuously the following statement, or a statement containing substantially similar language, on the first page in bold type:

**THIS REPORT IS NOT A TITLE INSURANCE POLICY! PLEASE READ IT CAREFULLY.
THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND
MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE
PROPERTY.
YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.**

(b) Where an applicant is only seeking a lender's title insurance policy, a title insurance agent shall provide to the applicant a separate written notice, which shall be signed by the applicant, at the time the title commitment or title report is prepared, and which shall explain:

(1) that a lender's title insurance policy protects the mortgage lender, and does not provide title insurance protection to the applicant as owner of the property being purchased;

(2) what a lender's title insurance policy insures against and what an owner's title insurance policy insures against; and

(3) that the applicant may obtain an owner's title insurance policy to protect the applicant's interest as an owner, and provide the website address for the insurance corporation's rate calculator or a toll-free telephone number the applicant or the applicant's attorney may call for a premium quote.

(c) If no title insurance agent is used, then the title insurance corporation shall provide the notices and obtain the applicant's signature.

Section 35.8 Use of title closer by title insurance agent and title insurance corporation.

(a) When a title insurance corporation engages or uses a title insurance closer at a closing, the title insurance corporation shall exercise due diligence to ensure that the title closer is competent and trustworthy; provided that if the title insurance agent engages the title insurance closer, the title insurance agent shall exercise such due diligence.

(b) Any acts relating to the issuance of a title policy that are performed by a title closer while the closer is acting for or on behalf of the title insurance agent or title insurance corporation are the responsibility of the title insurance agent or the title insurance corporation that engaged such title closer.

Section 35.9 Statistical data call.

Every title insurance agent shall timely comply with and respond to a rate service organization's annual statistical data call.

Section 35.10 Record retention.

Every title insurance agent shall retain any notice or disclosure that is provided pursuant to this Part in accordance with the requirements in Part 20.4 of this Title (Insurance Regulation 29-A) and this Part.