

# TAKE JUDICIAL NOTICE

## Anti-Kickback Statute

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**March 17, 2005**

[NYS Insurance Law Section 6409\(d\) opinion letter](#)

Contract provisions requiring purchasers from builders or condo sponsors to use a specific title company or pay penalties have been declared illegal kickbacks.

In an opinion issued by the Office of the General Counsel, on January 20, 2005, the Insurance Department declared that the practice violates that portion of Section 6409 which prohibits direct or indirect offering of a valuable thing as an inducement for any title insurance placement.

Although the statute clearly intends to punish the attorney or title company the buyer could end up paying as much as \$1,000 or five times the amount of the penalty fee.

The seller under such a contract with this requirement was held to be acting "for or on behalf" of the title insurance company, even if no direct financial relationship exists. Additionally, RESPA clearly prohibits a seller from requiring a purchaser to use a specified title company.

If sellers and their attorneys do not voluntarily cease and desist, the buyer's attorney must advise his client of the severe ramifications to a buyer who signs such a contract and selects the required title company.

For a full copy of the State Insurance Department Decision, you can contact Judicial Title Insurance Agency LLC at (914) 381-6700 or go on our website at [www.judicialtitle.com](http://www.judicialtitle.com) and look under "Take Judicial Notice".

This is an opportune moment to remind the real estate bar that since 2001, with the passage of the Lopez Bill, it is illegal for lenders, mortgage brokers or mortgage bankers to require the use of a particular title company.