

Question:

Is a title insurance provider permitted to enter into a joint venture agreement with an affiliated person?

Answer:

Extracted from: 11 NYCRR 35 – Insurance Regulation 206:

Section 35.4 Insurance Law section 6409(d); affiliated business relationships; other prohibitions.

- A. Pursuant to Insurance Law section 6409(d), no title insurance corporation, title insurance agent, or any other person acting for or on behalf of the corporation or agent, including an employee or independent contractor, shall offer or make, directly or indirectly, any rebate, or pay or give any consideration or valuable thing as an inducement or compensation for title insurance business, to any applicant, 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, for which a title insurance policy is or may be issued and no such person shall receive, directly or indirectly, any rebate, consideration or valuable thing as an inducement or compensation for title insurance business.
- B. A title insurance agent or title insurance corporation, or affiliated person of the title insurance agent or title insurance corporation, shall not directly or indirectly refer title insurance business to another title insurance agent or title insurance corporation in return for that title insurance agent or title insurance corporation, or affiliated person of that title insurance agent or title insurance corporation, referring business directly or indirectly to the first title insurance agent, title insurance corporation or affiliated person. Any such arrangement shall be deemed to be intended to evade Insurance Law section 6409(d).
- C. 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.
- D. A title insurance agent or title insurance corporation shall not directly or indirectly provide compensation to an applicant for insurance or to any person 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 for which a title insurance policy is or may be issued, that refers title insurance business to the title insurance agent or title insurance corporation except that a title insurance agent or title insurance corporation may:

- (1) pay the fair market value for actual bona fide services rendered to the title insurance agent or title insurance corporation; and
- (2) provide a return on investment in the title insurance agent or title insurance corporation to the person provided that the return on investment is commensurate with that person's ownership interest in the title insurance agent or title insurance corporation, is not related to the amount of title insurance business the person 10 refers to the title insurance agent or title insurance corporation, and the payment does not otherwise violate Insurance Law section 6409 or RESPA.

E.

- (1) A title insurance agent, title insurance corporation, or affiliated person shall not require an applicant for insurance, or any other 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 for which a title insurance policy is or may be issued, to purchase any other goods or services from the title insurance agent, title insurance corporation or affiliated person as a condition to such applicant purchasing title insurance from the title insurance agent or title insurance corporation.
- (2) A title insurance agent, title insurance corporation, or affiliated person shall not require an applicant for insurance, or any other 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 for which a title insurance policy is or may be issued, to obtain title insurance from the title insurance agent or title insurance corporation as a condition to purchasing any other goods or services from the title insurance agent, title insurance corporation or affiliated person.
- (3) A title insurance agent, title insurance corporation, or any other person acting on behalf of the title insurance agent or title insurance corporation shall provide its services to applicants for insurance in a fair and nondiscriminatory manner.

F. A title insurance agent or title insurance corporation that accepts affiliated business from an affiliated person shall:

- (1) Function separately and independently from the affiliated person, including being staffed by its own employees, provided, however, that, to the extent permissible under RESPA, the employees of a law firm that is licensed as a title agent may also provide the title agent services;

- (2) Engage in all or substantially all of the core title services with respect to the affiliated business; and
 - (3) Make a good faith effort to obtain, and be open for, title insurance business from all sources and not business only from affiliated persons, including actively competing in the marketplace.
- G. No title agent or title insurance corporation shall enter into an agreement or other arrangement, including a joint venture, with another person that circumvents Insurance Law section 6409(d).
- H. Nothing in this section shall be deemed to limit the superintendent's authority to enforce any violation of Insurance Law section 6409(d) or any other applicable laws or regulations.

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 shall obtain written acknowledgement of receipt from the applicant:
- (1) whether the affiliated person has a financial or other interest in the title insurance agent or title insurance corporation and whether the affiliated person 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) that any compensation 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 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 compensation or other thing of value does not violate Insurance Law sections 2324 or 6409 or, if applicable, RESPA;

- (4) that the affiliated person is not required to refer a specified amount of title insurance business to the title insurance agent or title insurance corporation;
 - (5) the amount or value of any compensation or other thing of value that the affiliated person expects to receive in connection with the services to be provided by the title insurance agent or title insurance corporation to which the applicant is being referred; provided, however, that if the amount or value of any compensation to be disclosed is not known at the time that the disclosure is required, then the affiliated person shall:
 - i. describe the circumstances that may determine the receipt and amount or value of the compensation; and
 - ii. provide a reasonable estimate of the amount or value, which may be stated as a range; and
 - (6) whether the title insurance agent or title insurance corporation generates non-affiliated business from more than one source.
- C. 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 receives all disclosures that are required hereunder.
- D. 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.