

## Comment on Regulation 206 (I.D. No. DFS-29-14-00014-P)

### REAL PROPERTY LAW SECTION

RPLS #16

August 11, 2014

**REGULATION REFERRED TO:** New 11 NYCRR 35 (Insurance Regulation 206) that implements provisions of New York's new Title Agent Licensing Statute.

**THE REAL PROPERTY LAW SECTION BELIEVES THAT  
A CLARIFICATION TO THE REGULATION IS NECESSARY TO  
CARRY OUT THE STATUTORY INTENT**

For years the Real Property Law Section of the New York State Bar Association and the New York State Land Title Association supported the concept of licensing title insurance agents. As part of the budget process leading to the enactment of Chapter 57 of the Laws of 2014, an agreement was reached by the organizations on statutory language that was instrumental in the passage of a bill authorizing the licensing of title agents. *See NY Insurance Law §2113(e)*.

We have reviewed proposed regulation, I.D. No. DFS-29-14-00014-P, published in the *New York State Register* as of July 23, 2014, and the Erratum published in the *New York State Register* on August 6, 2014. We now support this proposed regulation, provided that the following important clarification is included in the final regulation:

Section 35.4 (a) should be amended to read as follows:

(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. For purposes of this Part, the engagement as an attorney or law firm to represent a client in a matter and also as a title insurance agent for the client in the matter shall not be deemed a referral.

We propose the addition in order to clarify the understanding that an attorney or law firm representing a client in a transaction while also acting as a title agent is not deemed to have made a referral. Because of past claims by certain title agents and prior positions taken by some administrators before enactment of Chapter 57, we believe that the addition is needed to prevent misunderstanding, requests for opinions and possible litigation over the multiple sources of business language. Further, we believe this more clearly implements the statutory language compromise reached, at the urging of the Department, after years of negotiation between the Real Property Law Section and the New York State Land Title Association.

For the foregoing reasons, the Real Property Law Section supports the regulation with the proposed clarification.

Preparer of this Comment: Task Force on Title Agent Licensing.

Section Chair: David Berkey, Esq.