

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-affiliated, 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 35.4 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) (1) A title insurance agent, title insurance corporation or affiliated person shall not require an applicant for insurance to purchase any other good or service from such title purchasing title insurance from such 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 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 affiliated person.

(3) A title insurance agent, title insurance corporation or affiliated person shall provide its services to applicants in a fair and nondiscriminatory manner without regard to whether the applicant has been referred to the title insurance agent or title insurance corporation by an 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) 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; provided, however, 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;

(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.