



New York Underwriting Bulletin

From: Michael Kelly, New York State Counsel

Dated: October 7, 2014

Bulletin No: NY14-09

Name: Affiliated Business Relationships

Sections 35.1, 35.4 and 35.5 of the recently adopted title insurance regulations define and impose significant restrictions on affiliated business relationships in New York. Unlike RESPA regulations, these regulations apply to all transactions, residential and commercial.

The regulations are attached to this bulletin. The outline below is only a brief summary of the main provisions.

Definitions of the various terms are given in section 35.1

- Note that the “applicant” is defined as the person or entity that is purchasing or mortgaging the property, not necessarily the person who sent the order to you

The rules governing affiliated business relationships are set forth in section 35.4

- Note the requirement for significant and multiple sources of business. This is a longstanding requirement expressed in various Insurance Department opinions in New York, but this is the first time it has been reduced to an actual regulation
- The affiliated person referring the business may only be compensated for work actually done, or a return on investment. The payment of a commission just for the referral is not permitted
- Subsection (d) is an anti-tying regulation. The applicant is not required to purchase any other service, nor is the applicant required to use the particular agent as a condition of obtaining the services of the referring affiliated person

Disclosures are required by section 35.5

- The disclosure is to be made by the “affiliated person” not the agent.
- A written disclosure, with a receipt from the applicant, must be obtained prior to the referral of business.

- The disclosure must describe the nature of the relationship and the compensation that the referring person will receive
- The disclosure must also estimate the cost or range of charges for services of the title insurance agent. This is similar to but separate from the good faith estimate of charges required to be made by the agent pursuant to Insurance Law 2113(b) (see Bulletin NY14-07a for reference)
- Although the title insurance agent is not making the disclosure, the agent is responsible for ensuring that it is done (sub (b))
- There is an exemption for attorney agents who also represent the applicant (sub (c))

This disclosure is unique to New York transactions and is additional to and separate from any other required disclosures.

All New York Underwriting Bulletins and forms may be accessed at the New York section of our Underwriting Library at:

<http://wfgunderwriting.com/new-york/>

Please contact me at mkelly@wfgnationaltitle.com with any additional questions.