

## Title TRACK

### Affiliation, disclosures, and the title industry: What does DFS Regulation 206 change?

The New York State Department of Financial Services (DFS) instituted Insurance Regulation 206 on Oct. 18, 2017. These new regulations focus on title insurance agents, affiliated relationships, and required disclosures. In addition to reaffirming the prohibition on inducements to title insurance business in affiliate relationships, new Section 35.4 of Regulation 206 imposes specific restrictions on title agencies and title companies with affiliates that refer business to title entities. Specifically, the regulations prohibit a title insurance agent or company from requiring an affiliated person to refer a specified amount of title business to the title entity. In addition, a title insurance agency or company that accepts business from an affiliated person must do the following:

- Function separately and independently from the affiliated person, including being staffed by its own employees;
- Engage in all or substantially all of the core title services with respect to the affiliated business; and
- Make a good faith effort to obtain and be open for title insurance business from all sources, not just business from affiliated persons, including actively competing in the marketplace.

Those requirements are similar to policy guidance issued in the 1990s by the U.S. Department of Housing and Urban Development under the Real Estate Settlement Procedures Act (RE-

“ A title insurance agent shall furnish a title insurance report to the applicant and the applicant’s representative at least three days prior to the scheduled date of closing — provided, however, that if an applicant is represented by an attorney, then a title insurance agent shall furnish a title insurance report to the applicant’s attorney unless the applicant also requests the title insurance report, in which case the title insurance agent shall furnish the report to both the applicant and the applicant’s attorney. Certain of those disclosures match required elements of the federal affiliated business disclosure form under RESPA.

SPA). Regulation 206 makes the standards actual requirements for operating affiliated title businesses in New York, rather than mere factors for consideration when measuring an affiliated business’s compliance with federal law.

Similar to requirements under federal law, Section 35.5 of the final regulations requires “an affiliated person

that directly or indirectly refers an applicant for title insurance to a title insurance agent or title insurance corporation” to, “at the time of making the referral,” provide certain disclosures pursuant to New York Insurance Law Section 2113(d) “in a separate writing

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to the applicant” and obtain “written acknowledgement of receipt from the applicant.” The disclosures include, but are not limited to:

- Whether the affiliated person has a financial or other beneficial interest in the title insurance agent or corporation and is likely to receive a financial or other benefit as a result of the referral;
- That the applicant is not required to use the services of the title insurance agent or corporation to which the applicant is referred and that the applicant may shop around to determine whether the applicant is receiving the best services and the best rate for those services;
- That any compensation or other thing of value paid by the title insurance agent or corporation to the affiliated person is based on that person’s financial or other beneficial interest in the title insurance agent or corporation, is not related to the amount of title insurance business that person refers to the title insurance agent or corporation, and the payment of such money or other thing of value does not violate New York insurance laws or RESPA;
- The amount or value of any com-

penetration 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 corporation to which the applicant is being referred; and

- Whether the title insurance agent or corporation generates non-affiliated business from more than one source.

Section 35.6 describes the required disclosure of fees and other charges that title companies and agents must publish on their websites. It includes a range of charges for title insurance and ancillary fees or any discretionary fees that are not otherwise included in the title premium approved by the DFS Superintendent.

Every title insurance agent shall conspicuously post at its place of business and on its website, if it has one, its fees for services performed in connection with the issuance of a title insurance policy. The title insurance agent shall also provide a copy of the fees to an applicant or potential applicant in a written document.

Section 35.7 requires other disclosures to applicants.

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Certain of those disclosures match required elements of the federal affiliated business disclosure form under RESPA. However, the New York disclosures go beyond what RESPA requires. Both RESPA and the New York regulation require separate affiliated business disclosures.

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