

REAL PROPERTY LAW SECTION
Assembly Standing Committee on Insurance - Public Hearing -
An Examination of Recent Title Insurance Regulations in New York State
to evaluate new title insurance regulations in New York State

RPLS #3

January 12, 2017

Background

The Real Property Law Section (Section) of the New York State Bar Association has long-supported the licensing of title insurance agents. For years leading up to enactment of Chapter 57 of the Laws of 2014, which provides the statutory authority for the licensing of title insurance agents, the Section was engaged in numerous discussions to effectuate such a statutory codification. Likewise, we were meaningfully engaged in the negotiations that led to the ultimate enactment of Chapter 57. Those negotiations resulted, in part, in statutory language to ensure that attorney-title agents would be able to serve their clients as they have for centuries.

Attorneys-at-law in New York have been issuing written certifications of title for over 200 years before the advent of title insurance in the early twentieth century. Indeed, what is now Section 495 Subdivision 5 of the Judiciary Law (formerly Section 280 of the Penal Law) had to be enacted in 1909 to exempt title insurance corporations from the unlawful practice of law provisions of the Penal Law. Attorney title agents have always been, and will continue to be regulated under the Judiciary Law.

Many attorney title agents provide title insurance to their clients as an adjunct to their practice of law. However, many attorney title agents only provide title insurance for their own clients. This practice is authorized by ethics rules and opinions applicable to New York attorneys. In these circumstances the attorney performs the requisite services, provides full disclosure and obtains informed consent. In many cases, attorney-title agents do not have, nor do they actively seek, title insurance business from other parties or the general public. Attorney title agents often provide title insurance only to their own clients because much of the work done in insuring title is legal in nature and the attorney considers the title insurance work as an appropriate and efficient method of representing the client.

Discussion

New York Insurance Law §2113(e) provides for the status quo in allowing attorneys to continue to provide title insurance to their clients where 1) the attorney or firm acted as counsel in a transaction; and 2) actually performed title services. The Real Property Law Section of the New York State Bar Association continues to take the position that payment simply for the referral of title insurance business violates Insurance Law §6409(d).

The Section appreciates that the new regulations clearly recognize the statutory provision which preserves the status quo for attorney-title agents. Throughout the regulations there is both explicit and implicit recognition that an attorney may provide title insurance to clients as an adjunct to his or her law practice provided the attorney adheres to the terms and conditions of §6409(d). For example, the language of Insurance Regulation 206 §34.2 explicitly contemplates that an attorney or law firm may transact title insurance business from their law office.

However, in comments that we submitted to the Department we recommended that language be added to the regulations to ensure that they adhere more closely to the legislative intent of the Insurance Law, in particular §2113(e). Such language, was not included in the final regulation.

Conclusion

The Real Property Law Section of the New York State Bar Association has long recognized the importance of licensing title insurance agents. Accordingly, although attorneys are already regulated by the Judiciary, the Section did not object to licensing of attorneys as long as the status quo of allowing attorneys to provide title insurance to their clients was preserved. We were meaningfully engaged in the negotiations that led to ultimate enactment of Chapter 57 of the Laws of 2014, which codified statutory language to ensure that attorney-title agents would be able to continue to serve their clients as they have for centuries.

We appreciate policymakers' willingness to consider the unique consumer protections related to attorneys providing title insurance to their clients. We urge that any legislation or regulations conform to the legislative intent of Chapter 57. We look forward to continued discussion and consideration of these issues as this process moves forward.