



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

The Office of General Counsel issued the following informal opinion on May 11, 2001, representing the position of the New York State Insurance Department.

Re: Formation of Joint Venture/Title Agent by Real Estate Entity and Title Insurance Corporation

QUESTION PRESENTED:

Would a joint venture, comprised of a title insurance corporation and a real estate entity, violate N. Y. Ins. Law § 6409(d) (McKinney 2000) where the real estate entity refers its own title insurance business to the joint venture, is the only source of business for the joint venture, and shares in the profits of the joint venture?

CONCLUSION:

Yes. Because the real estate entity would be the only source of business for the joint venture and would share in the profits of the joint venture, any remuneration from the joint venture that flows to the real estate entity would constitute a rebate in violation of N. Y. Ins. Law § 6409(d) (McKinney 2000).

FACTS:

A title insurance corporation and a real estate entity would be the part owners of a joint venture/title agent and share in its profits. The real estate entity which engages in the purchasing, refinancing and leasing of commercial property, would place its title insurance business with the joint venture/title agent. The title agent would prepare the title reports, do the searches and close the title transactions for the real estate entity. The title insurance corporation would underwrite and issue the title insurance policy. The real estate entity would be the *only* source of business for the joint venture. The title insurance corporation and the real estate entity would share in the overall profits of the joint venture. The rate paid by the applicant for insurance and to the agent would be consistent with the rate manual filed with the Insurance Department.

ANALYSIS:

There is nothing in the Insurance Law that expressly prohibits a title insurer from sharing profits with a subsidiary or part owner, so long as the compensation given is not, directly or indirectly, related to the volume of business the subsidiary or part owner brings in. However, N. Y. Ins. Law § 6409(d) (McKinney 2000) prohibits a title insurance corporation from giving, directly or indirectly, any portion of its fees, premiums, or charges to any applicant for insurance or to any person, firm or corporation acting as agent or employee of the owner, as compensation for any title insurance business.

N. Y. Ins. Law § 6409(d) (McKinney 2000) provides:

(d) No title insurance corporation or any other person acting for or on behalf of it, shall make any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant for insurance, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee, or mortgagee of the real property or any interest therein,

either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business. Any person or entity who accepts or receives such a commission or rebate shall be subject to a penalty equal to the greater of one thousand dollars or five times the amount thereof.

Section 6409(d) prohibits the payment of any remuneration to any person or applicant for insurance if that payment bears any *direct or indirect* relationship to the title insurance business that person or applicant places with the agent or title insurer. Because there will not be multiple sources of business available to the joint venture in question, any profits that it realizes will bear an indirect relationship to the title insurance business brought in by the real estate entity/applicant for insurance, the sole source of its business. Thus, any remuneration that flows back to the real estate entity constitutes a rebate which is prohibited by N. Y. Ins. Law § 6409(d) (McKinney 2000).

For further information you may contact Attorney D. Monica Marsh at the New York City Office.