



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

George E. Pataki
Governor

Howard Mills
Superintendent

The Office of General Counsel issued the following opinion on December 29, 2006, representing the position of the New York State Insurance Department.

Re: Proposal to Give Financial Incentives to Customers Who Obtain Title Insurance from Title Agent or Homeowners Insurance from Affiliate

Question Presented:

May a title agent offer financial incentives to customers who elect to utilize the services of the title agent for title insurance, or the services of its affiliate for homeowners insurance?

Conclusion:

The provision of such incentives to applicants for insurance in return for the applicants utilizing the services of the title agent or its affiliate would violate N.Y. Ins. Law § 2324 (McKinney 2006) and/or N.Y. Ins. Law § 6409(d) (McKinney 2000).

Facts:

The inquirer asks whether it is permissible for a title agency, and its affiliate, a property/casualty insurance company, to engage in an arrangement whereby:

"The title agency plans to offer its customers certain incentives if the customer elects to obtain title insurance from the title agency and homeowners insurance from the title agency's affiliate company. Although the title agency has not settled on the exact incentive to be offered under the plan, the title agency may offer to discount the customer's settlement costs or other ancillary services unrelated to the title insurance premium. Alternatively, the title agency may offer the customer a gift certificate to a home improvement retail store or discount the cost of its affiliate's homeowners insurance policy.... In many cases, the title agency will offer the incentive to existing customers that have already placed an order for title insurance with the title agency."

The inquirer argues that any incentive offered to the applicant for using the title agency or property/casualty company "has no effect on the customer's selection of a title insurer as such insurance has already been ordered. For these reasons, [the inquirer] believe[s] the proposed incentives are intended to generate homeowners insurance business and do not qualify as inducements to title insurance."

Analysis:

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.

The question presented is whether a title agency may offer financial incentives to customers who utilize the services of the title agency for title insurance or, alternatively, the services of its affiliate property/casualty company for homeowners insurance. Section 6409(d) prohibits a title insurance corporation *or any other person acting for or on behalf of it* from directly or indirectly making, or offering to make, any rebate of any portion of the fee or charge or give any consideration or valuable thing as an inducement for, or as compensation for any title insurance business. Consequently, if the title agent gives or offers to give financial incentives such as reduction in settlement cost or gift certificates to its customers (applicants for insurance) who obtain title insurance from its title agency, such an arrangement would constitute a violation of Section 6409(d), even if made after the title insurance has been ordered.

Similarly, N.Y. Ins. Law § 2324 (McKinney 2006),¹ which governs property/casualty insurance, including homeowners and title insurance, provides, in pertinent part, as follows:

(a) No authorized insurer, no licensed insurance agent, no licensed insurance broker, and no employee or other representative of any such insurer, agent or broker shall make, procure or negotiate any contract of insurance other than as plainly expressed in the policy or other written contract issued or to be issued as evidence thereof, or shall directly or indirectly, by giving or sharing a commission or in any manner whatsoever, pay or allow or offer to pay or allow to the insured or to any employee of the insured, either as an inducement to the making of insurance or after insurance has been effected, any rebate from the premium which is specified in the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or shall give or offer to give any valuable consideration or inducement of any kind, directly or indirectly,

which is not specified in such policy or contract, other than any article of merchandise not exceeding fifteen dollars in value which shall have conspicuously stamped or printed thereon the advertisement of the insurer, agent or broker....

The proposal to offer financial incentives to customers who utilize the services of the inquirer's affiliate property/casualty company to obtain homeowners insurance would also violate Section 2324(a).

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

¹ See also N.Y. Ins. Law § 4224 (McKinney Supp. 2006), which governs life, accident and health insurance and annuities.