

## **Can a New York Attorney Represent a Client and Act as a Title Insurance Agent in the Same Transaction?**

### **Is it legal?**

Yes. “An attorney or his or her law firm may represent a client in a matter and may also act as a title insurance agent in such matter...” N.Y. Ins. Law § 2113(e)

### **Is it ethical?**

Yes. [\*Ethics Opinion 974\*](#) issued July 19, 2013 by the New York State Bar Association Committee on Professional Ethics concludes that it is ethical for an attorney to represent a party in a real estate transaction and receive payment to act as a title agent provided that:

- a) There is no conflict of interest between the client and the title insurance company;
- b) The attorney makes full disclosure to the client; and
- c) The lawyer’s fee is not excessive.

A [\*Disclosure Form\*](#) adopted from the Model Title Insurance Disclosure Form promulgated by the Real Property Section of the New York State Bar Association is available on CATIC Title’s web site.

### **Is a title insurance agent license required?**

Yes. A [\*Producer Application for a Title Insurance Agent’s License\*](#) must be submitted to the New York State Department of Financial Services. There is no examination required for a licensed attorney-at-law in good standing with the New York State Office of Court Administration. CATIC Title will assist you with the application process.

### **What other regulations affect attorney title insurance agents in New York?**

Only a licensed title insurance agent may receive a commission or other compensation for acting as a title agent. The commission may not be split with or rebated to the insured or to anyone else other than a licensed title insurance agent.<sup>1</sup> An attorney may not charge a reduced legal fee as an inducement to use the attorney as a title agent.<sup>2</sup> A title insurance agent cannot give anything of value as an inducement for title insurance business, including meals and beverages, entertainment, tickets, gifts, trips or parties.<sup>3</sup>

An attorney must disclose that his or her client is not required to use the attorney as the title insurance agent.<sup>4</sup> This disclosure is included in the [\*Disclosure Form\*](#) referred to above.

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<sup>1</sup> N.Y. Ins. Law § 2113(a)

<sup>2</sup> 5 OGC Op. No. 09-07-08

<sup>3</sup> N.Y. Comp. Codes R. & Regs. title 11, § 228.2; N.Y. Comp. Codes R. & Regs. title 11, § 35.4(a)

<sup>4</sup> N.Y. Ins. Law § 2113(f); N.Y. Comp. Codes R. & Regs. title 11, § 35.5(c)

Title insurance agents must post at their place of business and on their web site fees for services performed in connection with the issuance of a title insurance policy.<sup>5</sup> This information is available on CATIC Title's web site and can be linked to the attorney agent's web site.

When a title order is placed, the attorney agent must provide to their client a written good faith estimate of the premium for the policies to be issued and a breakdown of all fees and service costs, including all filing fees, recording charges, and closing costs, other ancillary or discretionary charges, and the amount of the commission to be paid to the agent.<sup>6</sup> Fees for legal services performed by an attorney agent are exempt from these regulations.<sup>7</sup> The amount that can be charged for some ancillary title services in a residential closing is limited by regulation.<sup>8</sup> CATIC Title will provide you with a written good faith estimate that you can give to your client when you place your title order. This good faith estimate will include a breakdown of all fees and costs in accordance with the regulations.

At or prior to the time of closing, a title insurance agent must give the applicant a list of the actual title insurance costs, including the title insurance premium, any discretionary or ancillary fees, and any other separately identifiable service charge.<sup>9</sup> Fees for legal services performed by an attorney agent are exempt from these regulations.<sup>10</sup> CATIC Title will provide you with a final title invoice that you can give to your client. This final title invoice will include a breakdown of all fees and costs in accordance with the regulations. This disclosure must be signed by your client and retained by the agent for three years.<sup>11</sup>

A title insurance agent is responsible as a fiduciary for funds he or she receives as a title agent. Any such funds must be held in a segregated premium account, unless the agent makes immediate remittance to the title insurance company.<sup>12</sup> CATIC Title agents collect the gross title premium and other title fees at closing and immediately remit funds to CATIC Title. Accordingly, a CATIC Title agent is not required to maintain a separate premium account.

Title insurance agents are subject to an annual data call. The New York Department of Financial Services requires all title insurance underwriters to report income and expense data from their agents. This data will be collected by CATIC Title during the first quarter of each year.

Title insurance agents are required to implement and maintain a written cybersecurity policy for the protection of nonpublic information. A title insurance agent must certify compliance annually to the Department of Financial Services. For more information about cybersecurity requirements for title agents, go to [www.dfs.ny.gov/about/cybersecurity.htm](http://www.dfs.ny.gov/about/cybersecurity.htm). CATIC Title will assist our agents in complying with these requirements.

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<sup>5</sup> N.Y. Comp. Codes R. & Regs. title 11, § 35.6(a)(2)

<sup>6</sup> N.Y. Ins. Law § 2113(b)

<sup>7</sup> N.Y. Ins. Law § 2119(f)

<sup>8</sup> N.Y. Comp. Codes R. & Regs. title 11, § 228.5

<sup>9</sup> N.Y. Comp. Codes R. & Regs. title 11, § 35.6(b)

<sup>10</sup> N.Y. Ins. Law § 2119(f)

<sup>11</sup> N.Y. Ins. Law § 2119(f)

<sup>12</sup> N.Y. Ins. Law § 2120, 11 NYCRR 20.3(b)

State and federal laws require that a title insurance agent perform certain core title services to receive a commission on the issuance of a title policy.<sup>13</sup> These services include evaluating the insurability of title, clearing title exceptions, preparing and delivering title insurance commitments and policies, and collecting title insurance premiums.<sup>14</sup> Refer to the publication on our website, “[The Attorney Title Agent in New York - Core Title Services](#),” for more information about core title services performed by CATIC Title attorney agents.

CATIC Title operates in multiple states with different statutory and regulatory schemes. CATIC Title constantly monitors this dynamic area of the law on your behalf. This is more important than ever as the statutory and regulatory framework is constantly changing along with the interpretations by courts and regulators. If followed correctly, our model and process are compliant with New York state law and federal law. We are extremely proud of the fact that CATIC Title and its attorney agents conduct their business in accordance with applicable law. Our Chief Compliance Officer, our compliance staff, and our outside retained national compliance counsel serve as resources for our valued attorney-agents in New York. Our experienced staff is available to assist you should you have any questions regarding these regulations or any other question related to your providing title services for your clients.

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<sup>13</sup> Real Estate Settlement Procedures Act (RESPA) 12 U.S.C. § 2601 *et seq.*

<sup>14</sup> N.Y. Comp. Codes R. & Regs. title 11, § 35.4