NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

FIFTH AMENDMENT TO 11 NYCRR 20
(INSURANCE REGULATIONS 9, 18 and 29)
BROKERS AND AGENTS – GENERAL

FIFTH AMENDMENT TO 11 NYCRR 29
(INSURANCE REGULATION 87)
SPECIAL PROHIBITIONS

FIRST AMENDMENT TO 11 NYCRR 30
(INSURANCE REGULATION 194)
PRODUCER COMPENSATION TRANSPARENCY

THIRD AMENDMENT TO 11 NYCRR 34
(INSURANCE REGULATION 125)
REQUIREMENTS PERTAINING TO THE LOCATION OF AN INSURANCE AGENT OR BROKER AT EACH PLACE OF INSURANCE BUSINESS:
REPORTING REQUIREMENTS

NEW 11 NYCRR 35
(INSURANCE REGULATION 206)
TITLE INSURANCE: TITLE INSURANCE AGENTS, AFLLIATED RELATIONSHIPS, AND REQUIRED DISCLOSURES

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law, do hereby promulgate the following amendments to Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, to take effect upon filing with the Secretary of State of New York, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

Section 20.1 is amended as follows:

Forms of applications for temporary licenses to be issued pursuant to Insurance Law section 2109 [of the Insurance Law] are prescribed for a temporary insurance broker's license, [and for a temporary] insurance agent's license, and title insurance agent's license. These forms may be obtained upon request to the Department of Financial Services, Albany, NY.

Section 20.2 is amended as follows:

Forms of notice of termination of appointment of insurance agents and title insurance agents pursuant to Insurance Law section 2112 [of the Insurance Law] are prescribed as follows: for agents licensed pursuant to Insurance Law section 2103(a) [of the Insurance Law]; for agents licensed pursuant to Insurance Law section 2103(b) [of the Insurance Law]. These forms may be obtained upon request to the Department of Financial Services, Albany, NY.

Section 20.3 is amended as follows:

§ 20.3 Fiduciary responsibility of insurance agents, title insurance agents, and insurance brokers; premium accounts.

(a) This section is issued for the purpose of interpreting, and facilitating compliance with, Insurance Law section 2120(a) and (c) [of the Insurance Law].

(b) Every insurance agent, [and every] a title insurance agent, and an insurance broker is responsible as a fiduciary for funds received by such insurance agent, title insurance agent, or insurance broker in such capacity; all such funds shall be held in accordance with the following paragraphs:

(1) An insurance agent, a title insurance agent, or an insurance broker who does not make immediate remittance to insurers and [assureds] insureds of such funds shall deposit them in one or more appropriately identified accounts in a bank or banks duly authorized to do business in this State, from which no withdrawals shall be made except as hereinafter specified (any such account is hereinafter referred to as "a premium account").

(2) An insurance agent, a title insurance agent, or an insurance broker who makes immediate remittance to insurers and [assureds] insureds of such funds need not maintain a premium account for such funds.

(3) Deposits in a premium account in excess of aggregate net premiums received but not remitted may be made to maintain a minimum balance, to guarantee the adequacy of the account, or to pay premiums due but uncollected (any such deposit is hereinafter referred to as "a voluntary deposit").

(4) No withdrawals from a premium account shall be made other than for payment of premiums to insurers, payment of return premiums to [assureds] insureds, transfer to an operating account of (i) interest, if the principals have consented thereto in writing and (ii) commissions, or withdrawal of voluntary deposits, provided, however, that no withdrawal may be made if the balance remaining in the premium account thereafter is less than aggregate net premiums received but not remitted.

(5) Deposit of a premium in a premium account shall not be construed as a commingling of the net premium and of the commission portion of the premium.

(6) In the case of an insurance agent or a title insurance agent operating under an "account current system", maintenance at all times in one or more premium accounts of at least the net balance of premiums received but not remitted shall be construed as compliance with Insurance Law section 2120(a) and (c) [of the Insurance Law], provided that the funds so held for each such principal are reasonably ascertainable from the insurance agent's or title insurance agent's records.

(c) Except as hereinabove provided, an insurance agent, a title insurance agent, or an insurance broker shall not commingle any funds received or collected as an insurance agent, a title insurance agent, or an insurance broker with his, her, or its own funds or with funds held by him, her, or it in any other capacity without the written consent of the person, firm, or corporation for whom they are held in a fiduciary capacity.

(d) If any provision of this section or the application thereof to any person or circumstances is held unauthorized by law, then the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20.4 is amended as follows:

§ 20.4 Fiduciary responsibility of insurance agents, title insurance agents, and insurance brokers; minimum recordkeeping requirements.

(a) This section is issued for the purpose of interpreting, and facilitating compliance with, Insurance Law section 2120(a) and (c) [of the Insurance Law].

(b)(1) Every licensee who is required to maintain a premium account shall maintain books, records and accounts in connection with [their] the licensee's business to record:

(i) all money received in trust for insurers or members of the public;

(ii) all disbursements out of money held in trust;

(iii) all other money received and disbursed in connection with the business.

(2) At a minimum, to comply with paragraph (1) of this subdivision, every licensee [who is] required to maintain a premium account shall maintain:

(i) a book or other permanent account record, imprinted with the name and address of the licensee, showing all receipts and disbursement of money, distinguishing therein between:

(*a*) the receipt of money in trust for insurers and members of the public and disbursements out of money held in trust, and the record shall have the following minimum detail:

(*1*) for receipts:

(*i*) amount of money received;

(*ii*) date received;

(*iii*) name of insured;

(*iv*) insurer's name and policy binder number; and

(*v*) description of the risk (vehicle type, property description, liability exposure, etc.); and

(*2*) for disbursements:

(*i*) amount of money received;

(*ii*) check number;

(*iii*) name of insured;

(*iv*) insurer's name and policy binder number; and

(*v*) description of the risk (vehicle type, property description, liability exposure, etc.); and

(*b*) money received and money paid by the licensee for general operations, services, sales and other insurance;

(ii) records in such form to show all billings, correspondence or other transmittal related to premiums, return premiums, commissions and fees charged to members of the public; <u>and</u>

(iii) bank statements or passbooks, cashed checks and detailed deposit slips for both trust and general accounts.

(3) Every licensee [who is] required to maintain a premium account shall maintain accounting records in a manner that clearly reflects the nature and purpose of the transaction and accurately and fairly states or measures or properly accounts for the money or valuable consideration exchanged in the transaction.

(4) Where this section requires a record to be kept by a licensee, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device.

(5) The licensee shall:

(i) take adequate precautions, for safeguarding the records and for protection against the falsification of the information recorded; and

(ii) provide means for making the information available in an accurate and useable form for inspection and copying to any person lawfully entitled to examine the record.

(c)(1) The information [which] <u>that</u> is made available under subparagraph (b)(5)(ii) of this section is admissible in evidence as *prima facie* proof of all facts stated therein.

(2) Where this section requires a record to be kept by a licensee, it shall be preserved for at least the three-year period preceding the most recent fiscal year-end of the licensee.

(3) The records described in subdivision (b) of this section shall be maintained in this State at the licensee's principal place of business or stored in such a manner as to allow reasonable accessibility and made available upon request by the department; or if a non-resident licensee, shall be made available in this State within [10] <u>ten</u> days upon request.

(4) The records described in subdivision (b) of this section shall be in addition to any requirements already detailed in the Insurance Law and Regulations <u>promulgated thereunder</u>.

(5) The record described by subclause (b)(2)(i)(*a*)(*1*) of this section, the receipt along with a copy of the application, shall be delivered to the insured at the time of its making.

(d) If any provision of this section or the application thereof to any person or circumstances is held unauthorized by law, then the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 29.5 is amended as follows:

(a) [Any] Except as provide in subdivision (c) of this section, any licensee who receives any fees and/or commissions, or shares thereof, in connection with any insurance services rendered to, or insurance coverages placed or serviced on behalf of, a governmental unit, shall file, with the [Department of Financial Services] department and the most senior official of the governmental unit who ordered such insurance services or coverages, a completed Governmental Insurance Disclosure Statement, affirmed by the licensee as true under penalties of perjury, on the prescribed form [attached hereto as] set forth in Exhibit B in section 29.6 of this Part, which statement after filing shall be a public record.

(b) Statements shall be filed with [Licensing Bureau of the Department of Financial Services, at the Albany office of] the department[,] on or before [the 15th day of] April 15 in each year with respect to fees and/or commissions, or shares thereof, received as of the preceding December [31st] 31. A general agent, as defined in this Part, shall not be required to file a Governmental Insurance Disclosure Statement with respect to insurance coverages placed in his or her capacity as a general agent, or on account of which commissions or shares thereof are paid to another insurance agent or insurance broker who ordered such coverages from said general agent.

(c) Pursuant to Insurance Law section 2128(b), a title insurance agent shall not be required to file a Governmental Insurance Disclosure Statement if an industrial development agency, state of New York mortgage agency or its successor, or any similar type of entity, is the named insured under the policy and is a mortgagee with respect to the property insured.

Section 29.6(a) is amended as follows:

(a) The form in subdivision (b) of this section is hereby approved for use as specified in this Part. [Any licensee may request the return of disclosure statements heretofore or hereafter filed with the Department of Financial Services, provided such request is made in writing to the Licensing Bureau at the Albany office of the Department of Financial Services and is accompanied by a self-addressed, postage paid envelope suitable for the return of such disclosure statements.]

Section 30.3 is amended by adding a new subdivision (g) as follows:

(g) Notwithstanding subdivision (a) of this section, if an insurance producer is a title insurance agent, then the title insurance agent shall, in lieu of the disclosures required by subdivision (a) of this section, provide the written disclosures required by Insurance Law section 2113(b). As part of such disclosure, the title insurance agent shall provide a description of the title insurance agent's role in the title insurance transaction and provide the information required by subdivision (b) of this section.

Section 34.1(a) and (b) are amended as follows:

(a) *Agent* means [any person, firm, association or partnership] an insurance agent as defined in Insurance Law section 2101(a)[, and licensed pursuant to section 2103 of the Insurance Law] or a title insurance agent as defined in Insurance Law section 2101(y).

(b) *Broker* means [any person, firm, association or corporation] an insurance broker as defined in Insurance Law section 2101(c) [and licensed pursuant to section 2104 of the Insurance Law].

Section 34.2 is amended by adding a new subdivision (h) as follows:

(h) Subdivisions (c), (d), and (e) of this section shall not apply to a title insurance agent that is a licensed attorney who transacts title insurance business from the agent's law office.

(All material hereinafter is new)

Section 35.1 Definitions.

For purposes of this Part:

(a) *Affiliated person* means a person who acts as an agent, representative, attorney, or employee of the owner, lessee, or mortgagee, or of the prospective owner, lessee, or mortgagee of real property or any interest therein, or such person's spouse, when the person or spouse directly or indirectly:

(1) is a member, employee, or director of a title insurance agent or title insurance corporation;

(2) owns any interest in a title insurance agent;

(3) owns at least five percent of a title insurance corporation's securities or controls the title insurance corporation; or

(4) is a subsidiary or affiliate of a title insurance agent or title insurance corporation.

(b) *Applicant* or *applicant for insurance* means the person for whom the purchase of the property that is the subject of the title insurance policy is financed, to whom a mortgage loan is made, or who owns or is purchasing the property or any interest therein, or a person who is an attorney-in-fact for such person.

(c) *Person* shall have the meaning set forth in Insurance Law section 2101(q).

(d) *Real estate settlement service* means any service that is provided in connection with a real estate transaction, including a title search, title examination, provision of title insurance commitments or certificates of title, title insurance, preparation of documents, services rendered by an attorney or a real estate agent or broker, origination of a mortgage loan (including the taking of a loan application or loan processing), and closing, or settlement.

(e) *RESPA* means the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. section 2601 et seq., as amended, and Regulation X, 12 C.F.R. Part 1024 et seq., as amended.

(f) *Significant and multiple sources of business* means title insurance business that a title insurance agent or title insurance corporation generates from non-affiliated, non-controlled or non-owner business sources that constitute a significant amount of the title insurance business transacted by the title insurance agent or title insurance corporation.

Section 35.2 Applications.

The forms of applications for licenses to act as a title insurance agent pursuant to Insurance Law section 2139 are prescribed as follows: individual and business entity.

Section 35.3 Change of contact information.

Every licensee shall notify the department of any change of business or residence address, telephone number, fax number, or email address within 30 days of the change.

Section 35.4 Affiliated business relationships.

(a) A title insurance corporation shall not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance corporation has significant and multiple sources of business. A title insurance agent shall not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance agent has significant and multiple sources of business.

(b) A title insurance agent or title insurance corporation shall not require an affiliated person to refer a specified amount of title insurance to the title insurance corporation or title insurance agent.

(c) No title insurance agent or title insurance corporation shall directly or indirectly provide compensation to an affiliated person that refers title insurance business to the title insurance agent or title insurance corporation except that:

(1) a title insurance agent or title insurance corporation may pay an affiliated person the fair market value for actual bona fide services rendered to the title insurance agent or title insurance corporation; and

(2) the affiliated person may receive a return on investment in the title insurance agent or title insurance corporation that is commensurate with that person's ownership interest in the title insurance agent or title insurance corporation.

(d)(1) A title insurance agent, title insurance corporation or affiliated person shall not require an applicant for insurance to purchase any other good or service from such title insurance agent, title insurance corporation or affiliate person as a condition to such applicant purchasing title insurance from such title insurance agent or title insurance corporation.

(2) A title insurance agent, title insurance corporation or affiliated person shall not require an applicant for insurance to obtain title insurance from such agent or corporation as a condition to purchasing any other goods or services from the title insurance agent, title insurance corporation or affiliated person.

(3) A title insurance agent, title insurance corporation or affiliated person shall provide its services to applicants in a fair and nondiscriminatory manner without regard to whether the applicant has been referred to the title insurance agent or title insurance corporation by an affiliated person.

Section 35.5 Referrals by affiliated persons and required disclosures.

(a) Except as provided in subdivision (c) of this section, an affiliated person that directly or indirectly refers an applicant for title insurance to a title insurance agent or title insurance corporation shall, at the time of making the referral, provide the following disclosures pursuant to Insurance Law section 2113(d) in a separate writing to the applicant and obtain written acknowledgement of receipt from the applicant:

(1) that the affiliated person has a financial or other beneficial interest in the title insurance agent or title insurance corporation and is likely to receive a financial or other benefit as a result of this referral;

(2) that the applicant is not required to use the services of the title insurance agent or title insurance corporation to which the applicant is being referred, and that the applicant may shop around to determine whether the applicant is receiving the best services and the best rate for the title services;

(3) that any money or other thing of value paid by the title insurance agent or title insurance corporation to the affiliated person is based on that person's financial or other beneficial interest in the title insurance agent or title insurance corporation and is not related to the amount of title insurance business that person refers to the title insurance agent or title insurance corporation; and that the payment of such money or other thing of value does not violate Insurance Law sections 2324 or 6409 or RESPA;

(4) that the affiliated person is not required to refer a specified amount of title insurance business;

(5) the amount or value of any compensation 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 the title insurance corporation to which the applicant is being referred; provided, however, if the amount or value of any compensation to be disclosed is not known at the time that the disclosure is required, then the affiliated person shall:

(i) describe the circumstances that may determine the receipt and amount or value of the compensation, and

(ii) provide a reasonable estimate of the amount or value, which may be stated as a range; ;

(6) an estimate of the cost or range of charges for the services of the title insurance agent or title insurance corporation, including, the title insurance premiums, fees and other charges; and

(7) that the affiliated person is not the sole source of business for the title insurance agent or title insurance corporation, and that the title insurance agent or title insurance corporation has significant and multiple sources of business.

(b) Except as provided in subdivision (c) of this section, the title insurance agent or title insurance corporation to which a referral is made shall be responsible for ensuring that the applicant for insurance received all disclosures that are required hereunder.

(c) A title insurance agent that represents an applicant in another capacity, including as an attorney, shall not be subject to the disclosure requirements set forth in subdivision (a) of this section, but shall advise the applicant that the applicant is not required to use the person as a title insurance agent.

Section 35.6 Disclosure of fees and other charges

(a) At the time of closing, a title insurance agent shall provide to the applicant, or the applicant's representative, a list of title insurance fees, including discretionary or ancillary fees, along with any other separately identifiable service charge, in accordance with the title insurance agent's or title insurance corporation's fee schedule. The title insurance agent also shall disclose to the applicant, or the applicant's representative, the premium for the title insurance policy at the time of closing. If no title insurance agent is used, then the title insurance corporation shall provide the notices.

(b) Every title insurance agent and title insurance corporation shall, on its website, make its range of charges for title services publicly available and accessible in a manner that permits a policyholder or potential applicant to independently determine the applicable charges. If a title insurance agent does not have a website, then the title insurance agent shall post its range of charges for title services in its place of business and provide the range of charges to policyholders or potential applicants in a written document.

Section 35.7 Other disclosures to applicants.

(a)(1) 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.

(2) If a title insurance agent is unable to deliver a title insurance report at least three days prior to closing, then the title insurance agent shall document or require documentation of the reasons for the delay.

(3) The report shall display conspicuously the following statement, or a statement containing substantially similar language, on the first page in bold type:

> **THIS REPORT IS NOT A TITLE INSURANCE POLICY! PLEASE READ IT CAREFULLY.**
> **THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY.**
> **YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.**

(b) Except with respect to a refinancing application or where the applicant is represented by an attorney, if an applicant is seeking only a lender's title insurance policy, a title insurance agent shall provide to the applicant a separate written notice, which shall be signed by the applicant, at the time the title commitment or title report is prepared, and which shall explain:

(1) that a lender's title insurance policy protects the mortgage lender, and does not provide title insurance protection to the applicant as owner of the property being purchased;

(2) what a lender's title insurance policy insures against and what an owner's title insurance policy insures against; and

(3) that the applicant may obtain an owner's title insurance policy to protect the applicant's interest as an owner, and provide the website address for the insurance corporation's rate calculator or a toll-free telephone number the applicant or the applicant's attorney may call for a premium quote from the title insurance corporation.

(c) If no title insurance agent is used, then the title insurance corporation shall provide the report and notice and obtain the applicant's signature.

Section 35.8 Use of title closer by title insurance agent and title insurance corporation.

(a) When a title insurance corporation engages or uses a title insurance closer at a closing, the title insurance corporation shall exercise due diligence to ensure that the title closer is competent and trustworthy; provided that if the title insurance agent engages the title insurance closer, the title insurance agent shall exercise such due diligence.

(b) Any acts relating to the issuance of a title policy that is performed by a title closer while the closer is acting for or on behalf of the title insurance agent or title insurance corporation are the responsibility of the title insurance agent or the title insurance corporation that engaged or used the title closer.

Section 35.9 Record retention.

Every title insurance agent shall retain any notice or disclosure that is provided pursuant to this Part in accordance with the requirements in Part 20.4 of this Title (Insurance Regulation 29-A) and this Part.

Statement of the Reasons for Emergency Measure
Fifth Amendment to 11 NYCRR 20 (Insurance Regulations 9, 18 and 29)
Fifth Amendment to 11 NYCRR 29 (Insurance Regulation 87)
First Amendment to 11 NYCRR 30 (Insurance Regulation 194)
Third Amendment to 11 NYCRR 34 (Insurance Regulation 125)
New 11 NYCRR 35 (Insurance Regulation 206)

Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014. Chapter 57 took effect on September 27, 2014.

A number of existing regulations that apply to insurance producers generally are amended to make them applicable to title insurance agents. Specifically, Part 20 addresses temporary licenses (Insurance Regulation 9), addresses appointment of insurance agents (Insurance Regulation 18), and regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers (Insurance Regulation 29), and are amended to include references to title insurance agents. Part 29 (Insurance Regulation 87) addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Part 30 (Insurance Regulation 194) addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Part 34 (Insurance Regulation 125) governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. In addition, a new Part 35 (Insurance Regulation 206) is added that address unique circumstances regarding title insurance agents.

It is critical for the protection of the public that appropriate rules and regulations are in place on and after the effective date of Chapter 57 to apply to newly-licensed title insurance agents and the title insurance business generated. Although the Department has diligently developed regulations to implement Chapter 57, due to the short time frame, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Maria T. Vullo
Superintendent of Financial Services

Dated: August 1, 2016

NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

I, Maria T. Vullo, Superintendent of Financial Services, do hereby certify that the foregoing is the Fifth Amendment to Part 20 (Insurance Regulations 9, 18 and 29); Fifth Amendment to Part 29 (Insurance Regulation 87); First Amendment to Part 30 (Insurance Regulation 194); Third Amendment to Part 34 (Insurance Regulation 125); and New Part 35 (Insurance Regulation 206) of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York signed by me on August 1, 2016, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law, to take effect upon filing with the Secretary of State of New York.

Pursuant to Section 202(6) of the State Administrative Procedure Act, this consolidated rulemaking is being promulgated as an emergency measure. This regulation was previously promulgated on an emergency basis on September 25, 2014, December 23, 2014, February 20, 2015, April 20, 2015, June 11, 2015, August 13, 2015, November 10, 2015, February 5, 2016, and May 4, 2016. A statement of the specific reasons for the finding of the need for emergency action is attached.

Maria T. Vullo
Superintendent of Financial Services

Date: August 1, 2016