NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

PROPOSED

FIFTH AMENDMENT TO 11 NYCRR 20
(INSURANCE REGULATIONS 9, 18 and 29)
BROKERS [AND], AGENTS AND CERTAIN OTHER LICENSEES – 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 publication in the State Register, to read as follows:

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

The title for Part 20 is amended to read as follows:

Brokers [and], Agents and Certain Other Licensees – General.

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, title insurance agent, and [every] 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, payment or other distribution of any other funds received or collected by the insurance agent, title insurance agent, or insurance broker in a fiduciary capacity; transfer to a non-premium account of compensation received pursuant to Insurance Law section 2119 as provided in section 20.6 of this Part; 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)(1) This section is issued for the purpose of interpreting, and facilitating compliance with, Insurance Law section 2120(a) and (c) [of the Insurance Law].

(2) As used in this section, *licensee* means an insurance agent, a title insurance agent, or an insurance broker.

(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] funds received [in trust] or collected in a fiduciary capacity for insurers or members of the public;

(ii) all disbursements out of [money held in trust] funds held in a fiduciary capacity; and

(iii) all other [money] funds received, collected, 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] stating the name and address of the licensee, showing all receipts, collections, and [disbursement] disbursements of [money] funds, distinguishing therein between:

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

(*1*) for receipts:

(*i*) amount of [money] funds received or collected;

(*ii*) date received;

(*iii*) name of insured;

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

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

(*2*) for disbursements:

(*i*) amount of [money received] funds disbursed;

(*ii*) check number or, if a check is not used, other information sufficient to identify the disbursement;

(*iii*) name of insured;

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

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

(*b*) [money] funds received and collected and [money paid] funds disbursed 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; and

(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] funds 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] that 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 unless a longer period is required by statute or other regulation.

(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] ten days upon request.

(4) The records described in subdivision (b) of this section shall be in addition to any requirements already [detailed] specified in the Insurance Law and [Regulations] regulations promulgated thereunder.

(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 20.6 is amended as follows:

20.6 Fees; Insurance Law section 2119.

(a) As used in this section:

(1) *Compensation* means any fee, commission or thing of value.

(2) *Licensee* means an insurance agent, title insurance agent, insurance broker, insurance consultant, or life settlement broker.

(b) Insurance Law section 2119 authorizes a licensee to receive compensation provided that the licensee has obtained a written memorandum signed by the party to be charged, in accordance with such section.

(c) A licensee shall not charge or collect compensation without such a memorandum, nor shall any such licensee charge or receive compensation except as provided in Insurance Law section 2119.

(d) The memorandum shall include the terms and date of the agreement, and the amount of the compensation. Where [a fee] compensation is permitted, [no] to the extent practical, the licensee shall obtain

the written memorandum prior to rendering the services. The licensee shall not stipulate, charge or accept any [fee that is] compensation if the licensee has not fully disclosed the amount or nature of the compensation or the basis [which is not fully disclosed] for determining the amount of the compensation prior to the service being rendered[; by executing a signed memorandum by the client which contains the term of the agreement and the date and the amount of such fee prior to providing the services]. [Such fees]

(e) When a licensee is an insurance agent, title insurance agent, or insurance broker, the licensee shall [be segregated] segregate the compensation from fiduciary funds in the licensee's premium account; provided, however, that if the licensee receives or collects funds, such as a check, that includes both fiduciary funds and other compensation, then the licensee may deposit the total funds in the premium account but shall promptly withdraw the fees from the premium account and [accounted] account for the [fees] compensation in a manner consistent with sections 20.3(b)(3) and (4) and 20.4(b) of this Part.

Section 29.5 is amended as follows:

(a) [Any] Except as provided 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] the 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] Every statement required by subdivision (a) of this section 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, her, or its 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.]

Item (7) of Section 29.6(b) is amended as follows:

(7) The services rendered by the persons listed in [items] item 5, for which a share of commissions was paid:

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 the 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 who is a licensed attorney or that is a law firm who or that transacts title insurance business from the title insurance agent's law office.

(ALL MATERIAL HEREINAFTER IS NEW)

A new Part 35 (Insurance Regulation 206) is added to read as follows:

TITLE INSURANCE: TITLE INSURANCE AGENTS, AFLLIATED RELATIONSHIPS, AND REQUIRED DISCLOSURES

Section 35.1 Definitions.

For purposes of this Part:

(a) *Affiliated business* means title insurance business that a title insurance agent or title insurance corporation generates from an affiliated person.

(b) *Affiliated person* means an applicant for insurance or 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 the applicant's or other person's spouse, when the person or spouse directly or indirectly:

(1) owns or controls a title insurance agent;

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

(3) is under common control with or is controlled by a title insurance agent or title insurance corporation.

(c) *Applicant for insurance* or *applicant* means:

(1) a person for whom the purchase or refinancing 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,

(2) any other insured or prospective insured; or

(3) a person who is an attorney-in-fact for a person specified in paragraphs (1) or (2) of this subdivision.

(d) *Controls*, including the terms "*controlling*", *controlled by*" and, *under common control with*" shall have the meaning set forth in Insurance Law section 107(a)(16).

(e) *Core title services* means:

(1) Evaluating the insurability of title, based upon the performance or review of a title search;

(2) Collecting, remitting or disbursing title insurance premiums, escrows or other related funds;

(3) Preparing, amending, marking up and delivering a title insurance commitment or certificate of title for the purpose of the issuance of a title insurance policy by a title insurance corporation;

(4) Preparing, amending or delivering a title insurance policy on behalf of a title insurance corporation; and

(5) Negotiating the clearance of title exceptions, in connection with the issuance of a title insurance policy.

(e) *Person* means an individual or other entity, including an estate or trust.

(f) *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.

(g) *Title insurance closer* means any person who, for compensation or anything of value, represents a title insurance corporation or title insurance agent at a closing.

(h) *Title insurance agent* shall have the meaning set forth in Insurance Law section 2101(y).

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 Insurance Law section 6409(d); affiliated business relationships; other prohibitions.

(a) Pursuant to Insurance Law section 6409(d), no title insurance corporation, title insurance agent, or any other person acting for or on behalf of the corporation or agent, including an employee or independent contractor, shall offer or make, directly or indirectly, any rebate, or pay or give any consideration or valuable thing as an inducement or compensation for title insurance business, to any applicant, 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, for which a title insurance policy is or may be issued and no such person shall receive, directly or indirectly, any rebate, consideration or valuable thing as an inducement or compensation for title insurance business.

(b) A title insurance agent or title insurance corporation, or affiliated person of the title insurance agent or title insurance corporation, shall not directly or indirectly refer title insurance business to another title insurance agent or title insurance corporation in return for that title insurance agent or title insurance corporation, or affiliated person of that title insurance agent or title insurance corporation, referring business directly or indirectly to the first title insurance agent, title insurance corporation or affiliated person. Any such arrangement shall be deemed to be intended to evade Insurance Law section 6409(d).

(c) 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.

(d) A title insurance agent or title insurance corporation shall not directly or indirectly provide compensation to an applicant for insurance or to any person 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 for which a title insurance policy is or may be issued, that refers title insurance business to the title insurance agent or title insurance corporation except that a title insurance agent or title insurance corporation may:

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

(2) provide a return on investment in the title insurance agent or title insurance corporation to the person provided that the return on investment is commensurate with that person's ownership interest in the title

insurance agent or title insurance corporation, is not related to the amount of title insurance business the person refers to the title insurance agent or title insurance corporation, and the payment does not otherwise violate Insurance Law section 6409 or RESPA.

(e)(1) A title insurance agent, title insurance corporation, or affiliated person shall not require an applicant for insurance, or any other 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 for which a title insurance policy is or may be issued, to purchase any other goods or services from the title insurance agent, title insurance corporation or affiliated person as a condition to such applicant purchasing title insurance from the 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, or any other 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 for which a title insurance policy is or may be issued, to obtain title insurance from the title insurance agent or title insurance 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 any other person acting on behalf of the title insurance agent or title insurance corporation shall provide its services to applicants for insurance in a fair and nondiscriminatory manner.

(f) A title insurance agent or title insurance corporation that accepts affiliated business from an affiliated person shall:

(1) Function separately and independently from the affiliated person, including being staffed by its own employees,

(2) Engage in all or substantially all of the core title services with respect to the affiliated business; and

(3) Make a good faith effort to obtain, and be open for, title insurance business from all sources and not business only from affiliated persons.

(g) No title agent or title insurance corporation shall enter into an agreement or other arrangement, including a joint venture, with another person that circumvents Insurance Law section 6409(d).

(h) Nothing in this section shall be deemed to limit the superintendent's authority to enforce any violation of Insurance Law section 6409(d) or any other applicable laws or regulations.

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 shall obtain written acknowledgement of receipt from the applicant:

(1) whether the affiliated person has a financial or other interest in the title insurance agent or title insurance corporation and whether the affiliated person 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 compensation 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 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 compensation or other thing of value does not violate Insurance Law sections 2324 or 6409 or, if applicable, RESPA;

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

(5) the amount or value of any compensation or other thing of value that the affiliated person expects to receive in connection with the services to be provided by the title insurance agent or title insurance corporation to which the applicant is being referred; provided, however, that 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; and

(6) whether the title insurance agent or title insurance corporation generates non-affiliated business from more than one source.

(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 receives 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)(1) Every title insurance corporation shall publish on its website its range of charges for title insurance and any ancillary or other discretionary fees for services related to the title transaction that are not otherwise included in the rate of premium approved by the superintendent. The range of charges and fees shall be publicly available and accessible in a manner that permits an applicant 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.

(2) Every title insurance agent shall conspicuously post at its place of business and on its website, if it has one, its fees for services performed in connection with the issuance of a title insurance policy. The title insurance agent shall also provide a copy of the fees to an applicant or potential applicant in a written document. Pursuant to Insurance Law section 2119(f), a title insurance agent may charge a service fee only for ancillary services not encompassed in the rate of premium approved by the superintendent and provided that the fees are based upon a written memorandum in accordance with such section and section 20.6 of this Title.

(b) At or prior to the time of closing, a title insurance agent shall provide to the applicant, or the applicant's representative, a list of the applicant's actual title insurance costs, including the title insurance premium, any discretionary or ancillary fees, and any other separately identifiable service charge. If no title insurance agent is used, then the title insurance corporation shall provide the information.

Section 35.7 Other disclosures to applicants.

(a)(1) With respect to a real property or chattels real title insurance policy, 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) With respect to a personal property title insurance policy, a title insurance corporation shall furnish the applicant and the applicant's representative, at least three days prior to policy issuance, with a written confirmation of the proposed coverage, including any non-standard policy provisions; provided, however, that if an applicant is represented by an attorney, then a title insurance corporation shall furnish written confirmation of the proposed coverage to the applicant's attorney unless the applicant also requests the written confirmation, in which case the title insurance corporation shall furnish the written confirmation to both the applicant and the applicant's attorney.

(c) 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) the risks a lender's title insurance policy insures against and the risks 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 shall provide the website address for the title 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.

(d) 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 insurance 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, however, that if the title insurance agent engages the title insurance closer, then the title insurance agent shall exercise such due diligence.

(b) Any acts relating to the issuance of a title insurance policy that a title insurance closer performs while the title insurance 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 title insurance corporation that engaged or used the title insurance 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 set forth in Part 20.4 of this Title (Insurance Regulation 29-A) and this Part.