

June____,2009

Assembly Member/Senator
Albany, NY

Re: Title Insurance Agent Licensing Bills – Attorney's Role

Dear Mr./Ms. _____:

I am an attorney who practices real estate law in New York State. It has come to my attention that the State Insurance Department and New York State Land Title Association have each proposed a bill which provides for the licensing of title insurance agents. While title insurance agent licensing may be desirable, both bills contain provisions regarding "controlled business" which would effectively eliminate lawyers from writing title insurance for their own clients if their own clients are the only source of the attorney's title insurance business.

Historically, in New York State and in many parts of the United States examination of real estate titles and rendering an opinion as to the state of the title has been a function of a lawyer. In recent decades, title insurance has replaced or supplemented an attorney's written title opinion as a method of assuring that owners have good title to real property and mortgage lenders have a good mortgage lien. When a lawyer's client is involved with a purchase or mortgage transaction, very often the lawyer will prepare the title insurance. In essence, the title insurance has become a stronger version of a lawyer's title opinion because the title insurance policy has the financial backing of a title insurance company and will continue over time regardless of whether a lawyer remains in practice. Providing title insurance is essentially a lawyer function despite the fact that non-lawyer title insurance agencies and underwriters also issue title insurance policies.

For many real estate lawyers, the fee earned for preparing title insurance allows real estate work to be economically viable, particularly for residential transactions. This fee is part of the title insurance premium paid by the client and is earned by the lawyer for the often labor intensive work of preparing title insurance. If lawyers are prevented from writing title insurance, many may find they are not able to continue doing residential work without substantially raising their fees. This would likely result in increased transaction costs for consumers in that they would be paying their lawyers more while still paying the same state regulated uniform title insurance premium. Alternatively, if the lack of title

insurance business forces many lawyers out of the area of real estate work, consumers may suffer from the lack of experienced lawyers reviewing and drafting contracts, addressing title issues for real property, handling occupancy and repair issues, conducting the real estate closing and following up on post closing matters as well as addressing numerous other problems which come up in real estate transactions.

It is significant to note that the State Court system recently revised the rules governing attorney conduct. Among the new provisions is a clarification that attorneys are allowed to provide ancillary services to clients, including writing title insurance, with the consent of their clients.

I strongly urge you to oppose the title insurance agent licensing bills unless they are amended to remove the controlled business provisions which exclude lawyers from providing title insurance to their own clients.

Very truly yours,