



August 29, 2014

The DFS continues to refine and evolve their responses and the Association continues to advocate for standards that are compatible with established business practice. This document will be updated regularly as we ascertain information from the DFS. This document reflects our current understanding of the DFS position on these questions.

Please refer to the NYSLTA website for the most current version.

Questions and Answers regarding title agent licensing

1. Restricted words in company names:

Are there words I am not permitted to use in my company name?

Answer: Pursuant to Section 204(f) of the LLC Law and Section 301(a)(5)(b) of the Business Corporation Law (BCL), the use of certain words in your company name is restricted. These names are NOT necessarily prohibited; however, an additional approval is required from the Department of Financial Services (DFS) if your company name includes one of the words listed at this link: http://www.dos.ny.gov/corps/restricted_words.html. You may have obtained this approval when your company was formed. If so, attach a copy of said written approval with your application.

2. Notification of licensing rules:

How will we be advised of the interpretation of the licensing statute and the regulations?

Answer: To the extent necessary, the DFS will use its discretion to select the method of notifying its licensees about its requirements, including the possible use of a circular letter, website posting or other method. Information is currently available on the DFS website (http://www.dfs.ny.gov/insurance/lic_title.htm) with respect to the licensing process.

3. Licensees:

a. Who must obtain a license?

Answer: A business entity or an individual who meets the conditions of Section 2101(y)(1) of the insurance law must become licensed. Further, when a business entity is a licensee, at least one person with a financial or other beneficial interest in the business entity who meets the requirements of an agent, must become a sub-licensee of the business entity. Individuals who are not sub-licensees and who meet the definition of a title agent in Section 2101(y)(1) must obtain individual licenses. Additionally, the business entity and an individual licensee must have a Certificate of Appointment naming that entity or individual as an agent filed with the DFS by one or more title insurance corporations in order to conduct business and collect a commission.

It is within the title insurance company's discretion to issue a certificate of appointment for a business entity or an individual licensee.

Individuals who engage in the activities specified in Section 2101(y)(1) must be licensed individually as title agents or appointed as sub-licensees on behalf of business entities. A business entity must be licensed as a title agent if it engages in the activities described in Section 2101(y)(1). A business entity may engage in activities only through licensed individuals, known as sub-licensees. Every business entity must have at least one person appointed as a sub-licensee. At least one sub-licensee with a financial or other beneficial interest in the business entity must be appointed as a sub-licensee. Every sub-licensee must be an officer or director (if the business entity is a corporation) or a partner (if the business entity is a partnership), member (if the business entity is an LLC) or a manager. A sub-licensee may obtain his or her own individual title agent license or may be appointed as a sub-licensee without obtaining an individual license so long as the individual would otherwise meet the requirements to obtain a license. A business entity may in addition employ licensee title agents that are not sub-licensees.

There is no "sub-agent" status. Typically, that term refers to an agent that places business through another agent. Each agent involved in the placement of the business must be licensed if they do the activities set forth in Section 2101(y)(1).

Additionally, any employee of a title agent or title insurer performing the functions in Section 2101(y)(1) may not receive a commission or otherwise be compensated based upon business generated unless licensed as a title agent or listed as a sub-licensee on an entity's license. Therefore, this may result in some people who are currently receiving commissions to no longer be able to receive commissions unless they obtain individual licenses or are listed as a sub-licensee on an entity's license.

b. Is there ever an instance where an employee of an UNDERWRITER needs to obtain a license?

Answer: Yes, an employee of an underwriter receiving a commission and performing the functions set forth in Section 2101(y)(1) must obtain a license.

c. Do employees of a title agent or an underwriter, who are earning commissions and are to be issued individual licenses, need to first obtain a Certificate of Appointment from an underwriter?

Answer: Yes, the title insurance company may issue a Certificate of Appointment to the DFS if they deem it appropriate. The employee must be appointed by the insurer no later than 15 days from the date the agency contract is executed or the first insurance application is accepted by the DFS.

d. Most commissioned salespeople, who are either title agent or title company employees, receive a percentage of the premium as a commission, but do not perform functions that would qualify them to obtain a title agent license. Would this be considered an impermissible “sharing or splitting of the premium”?

Answer: No, this would not be considered an impermissible “sharing or splitting of the premium”. See Section 2101(y)(1) of the Insurance Law:

An employee of a title agent or title insurance corporation that is compensated based upon sales does not need to be licensed as a title agent unless the employee:

- (A) sells or negotiates the sale of a title insurance policy;
- (B) evaluates the insurability of title, based upon the performance or review of a title search;

AND

- (C) performs one or more of the following functions:
 - (i) collects, remits or disburses title insurance premiums, escrows or other related funds;
 - (ii) prepares, amends, marks up or delivers a title insurance commitment or certificate of title for the purpose of the issuance of a title insurance policy by a title insurance corporation;
 - (iii) prepares, amends or delivers a title insurance policy on behalf of a title insurance corporation; or
 - (iv) negotiates the clearance of title exceptions, in connection with the issuance of a title insurance policy.

4. Sub-licensees:

a. Who may apply as a sub-licensee?

Answer: The only sub-licensees that this regulatory scheme contemplates are officers, directors, members, managers, and officers of an entity that is applying for a license. At least one sub-licensee must have a financial interest in the entity that seeks a license. The application form for an entity license clearly states that only the aforementioned parties are to be designated as sub-licensees. For entities, this is the DFS’s way of identifying who is or may be acting on behalf of a corporate or LLC licensee in performing the duties of a title agent as outlined above. If it is determined that a salesperson or any other person receiving a commission performs the functions

set forth in all three categories of Section 2101(y)(1), and that person is not a sub-licensee, he or she must obtain an individual title agent license.

b. Does each individual sub-licensee need to apply for a license?

Answer: No. See 5(c) and 5(d) below.

c. Do sub-licensees obtain an actual license?

Answer: No, the sub-licensee is listed on the entity's license. However, the sub-licensee must satisfy the statutory qualification for licensing; the sub-licensees must take the Continuing Education (CE) courses to meet the CE requirement for license renewal.

d. Two sub-licensees, one of which is an attorney:

Assume a business entity agent re-applying for a license has two sub-licensees, one of whom is a practicing attorney and one who is not. Will the agent's license be re-issued if both of them do not complete their respective CE and CLE (Continuing Legal Education for attorneys) requirements?

Answer: Each sub-licensee must meet his/her individual CE/CLE requirements to qualify or remain qualified as a licensed title agent or to act as sub-licensee. In addition, in order to become licensed the non-attorney would have had to meet the pre-licensing education requirements and pass the examination, unless the non-attorney was otherwise exempt from those requirements.

e. Sub-licensee attorneys not involved in the operation of the agency:

Assume an agent applying for a license has two or more sub-licensees, all of whom are practicing attorneys. However, the agency is operated by a non-attorney who is not a sub-licensee, and the attorneys take no active role in the operation of the title agency. How are the requirements for the pre-licensing course and exam, as well as the continuing education requirements applied to the non-attorney who is operating the title agency?

Answer: The non-attorney generally must take the initial examination (unless he or she meets one of the exemptions) and must meet the CE requirements. The attorney sub-licensees must remain certified in good standing in New York and, as sub-licensees, are responsible for the actions of the business entity.

5. Certificates of Appointment:

a. Must a Certificate of Appointment be filed by the underwriter before the agent license application is approved?

Answer: A title agent application may be approved before a Certificate of Appointment is filed with the DFS. The title agent, however, may not engage in activities as a title agent for an insurer unless the notice of appointment is filed with the Superintendent within 15 days from the date the agency contract is executed or the first insurance application is accepted.

b) Does a sub-licensee need a Certificate of Appointment from an underwriter?

Answer: No, however, the entity under which they are listed as a sub-licensee must have a Certificate of Appointment naming them as an agent filed with the DFS by one or more title insurance corporations. An agent may do business only on behalf of a title insurer that has appointed that agent.

6. Multiple licenses:

Can I be a sub-licensee under an entity's license AND a licensee with an individual license?

Answer: Yes, a person can be a sub-licensee under an entity license and also have an individual license. A sub-licensee MAY have an individual license, but does not have to. However, if an individual does not have an individual license, he/she may act only on behalf of the business entity that has included him/her as sub-licensee.

7. Examining counsel:

Do examining counsels need to apply for an agent license?

Answer: Yes, if they engage in activities that require licensing as set forth in Insurance Law Section 2101(y)(1).

8. Exempt persons:

a. Is there a waiver form for a practicing attorney or a person with more than 5 years' experience in the title industry?

Answer: No, exempt persons are only exempt from the pre-licensing course and examination requirements. They must comply with all other application and renewal procedures. The application form contains a box to check and requests a Certificate of Good Standing for an attorney. The DFS has indicated they will accept a Certificate of Good Standing issued by the appropriate Appellate Divisions to satisfy Section 2139(g)(3) (the statute mistakenly states the Certificate of Good Standing be issued by the Office of Court Administration). This "grandfathering" provision set forth in Section 2139(g) (1) applies to applications submitted prior to September 27, 2015 (one year from the date that the law goes into effect).

- b. Who are the permitted affiants on the Statement of Experience for:**
- i) an LLC which has a single member LLC;**
 - ii) a corporation that has a sole shareholder (and that shareholder is the only officer);**
 - iii) for the owner(s) of an entity;**
 - iv) if there is more than one owner, can another owner (member, shareholder, partner) be the affiant? Technically they have no supervisor.**

Answer: Generally speaking, a subordinate employee should not be completing the Statement of Experience. Another owner, if sufficiently knowledgeable to answer the questions truthfully, may do so. In addition, it may be completed by a knowledgeable person at a title insurance corporation. It should be noted that more than one person can submit a statement if that person's knowledge only encompasses a portion of the 5-year period as long as the entire period is vouched for in total.

- c. Can an employer, who has not worked with a person who holds or is applying as an individual licensee or a sub-licensee for the past 5 years, but has personal knowledge that the person has been in the industry for at least the last 5 years sign the Statement of Experience?**

Answer: The employer must be sufficiently knowledgeable to answer the questions truthfully.

9. Pre-licensing course, Examination and Continuing Education:

- a. Will all business entity sub-licensees be required to have fully completed their statutory Continuing Education credits by the time they have to renew their licenses prior to April 30, 2015?**

Answer: No, there is no CE requirement at the time of the first renewal in 2015. Continuing Education is required upon renewal or relicensing *IF* the license has been in effect for 2 full years. Therefore, any title agent licenses expiring in 2015 will not require continuing education to renew because no title agent license will have been in effect for 2 years.

- b. Who is providing the Pre-Licensing Classes?**

Answer: As of now the only currently approved provider of pre-licensing education for title insurance is <http://nyrei.com/insurance.html>. The NYSLTA plans on applying to be an approved provider in the near future.

- c. How do we register to take the examination?**

Answer: The administrator of the examination can be found on the license application. To register and reserve an examination date, contact Prometric, Inc. at 1-800-324-7147 or online at <http://www.prometric.com/newyork/ins>.

10. Fees:

Are licensing fees required to be paid for sub-licensees?

Answer: Yes, the fee is required to be paid for each sub-licensee. Please note: “Business Entity” agents and their sub-licensees will each be charged a \$40.00 fee to apply for licenses, which will expire June 30, 2015. They will have to submit a renewal application prior to that date in order to remain licensed. For “Individual” (i.e. natural persons) agents, their initial licensing fees will depend on their birthdays- “Individual” agent licenses expire on the birthday of the agent. An Individual agent can pay \$40.00 for any license lasting 1 year or less, but has to pay \$80.00 for any license lasting over one year. Most Individual agents who have a birthday in an even numbered year will therefore have to pay \$80.00 for their initial licenses.

All license renewals, for both agents and sub-licensees, will cost \$80.00 and last two years. If a renewal application is submitted less than 60 days prior to expiration of the license, a late fee of \$10.00 is required. All “Business Entity” agents will have to file renewal applications every April 30 of odd-numbered years to avoid late charges.

11. Deadline for Application Submission:

When is the deadline for title agents to file the application for a license to continue doing business after September 27, 2014? There is some confusion among members as to whether the deadline is September 27, 2014 or January 1, 2015?

Answer: In order for the agent to continue doing business after January 1, 2015 while the application is pending, the application must be received by the Superintendent no later than January 1, 2015. We strongly encourage license applications to be submitted as soon as possible to facilitate the process. No one who submits an application after January 1, 2015 may engage in title agent activities unless a license is issued.

12. Miscellaneous:

The DFS has stated “For non-sub-licensee insurer or agent employees who hold individual licenses, the insurer must appoint each such employee as an agent and submit the certification”. Does this mean that said individual licensees will be subject to the Data Call?

Answer: For licensees that are employed by a business entity, the business entity will be responsible for the data call. The DFS will issue guidance clarifying this issue.)