



TITLE AGENT LICENSING –

QUESTIONS & ANSWERS:

QUESTIONS YOU'LL SEE IN THIS Q&A

WHO MUST BE LICENSED? / WHEN DO I NEED A SUB-LICENSEE, WHAT IS THEIR ROLE AND WHO CAN BE ONE? / CAN I SHARE COMMISSIONS / WHAT IS A PREMIUM ACCOUNT AND WHEN DO I NEED ONE? / WHAT ARE THE PENALTIES FOR A VIOLATION OF THE LAW? / AND MORE. . .

FIDELITY NATIONAL TITLE GROUP

**TITLE INSURANCE AGENT LICENSING - Q&A:
FIDELITY NATIONAL TITLE INSURANCE GROUP**

1. Licensing:

• **Q: Who must be licensed?**

- **A:** Any person or business entity that has an agency agreement with a title insurance corporation (“*Title Insurer*”) that for a commission or other compensation in conjunction with issuing a title insurance policy:
 - sells or negotiates the sale of a title insurance policy;
 - evaluates the insurability of title, based upon the performance or review of a title search; and
 - performs one or more of the following functions:
 - collects, remits or disburses title insurance premium, escrow or other related funds;
 - prepares, amends, marks up or delivers a title insurance commitment or certificate of title for the purpose of issuance of a title insurance policy by a title insurance corporation;
 - prepares, amends or delivers a title insurance policy on behalf of a title insurance corporation; or
 - negotiates the clearance of title exceptions in connection with the issuance of a title insurance policy; [N.Y. Ins. Law § 2101(y)(1)]

• **Q: Who does not need to be licensed?**

- **A:** The salaried officers or employees of an authorized Title Insurer or licensed title insurance agent (“*Licensed Agent*”) who do not receive a commission or other compensation that is directly dependent on the amount of title insurance business done by such employee. [N.Y. Ins. Law § 2101(y)(2)]
- **Sales Personnel:** The New York Department of Financial Services (“DFS”) has expressed the opinion that employees, including employee sales personnel, of a Title Insurer or Licensed Agent do not need to be licensed provided that such employee or sales person does not perform the functions of an agent described in § 2101(y)(1) in respect to the business placed by such employee or sales person. Underwriting employees who generate title insurance business for his or her employer can be paid a commission or compensation based on policies placed by the underwriting employee, so long as the underwriting employee does not perform the functions described in § 2101(y)(1) on the transaction for which he or she is paid a commission or compensation. The underwriting employee must therefore step back from the transaction and act only in a sales capacity in any transaction for which they are paid a commission or compensation.
- **Closers:** A closer who performs the function of a title closer and is paid only the usual and customary fee paid to title closers does not need to be a Licensed Agent.

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- *NOTE: The provision in the draft Law to separately license sales and title closer personnel was deleted from the enacted version.*
- **Providers of products and services** (i.e., abstractors, part-time readers, surveyors) to any Title Insurer or Licensed Agent need not be licensed as a Licensed Agent provided they are paid only the fair equivalent value for the services or products.
- **Q: Can a business entity licensed as a title insurance agent employ a person who is a Licensed Agent?**
 - **A:** Yes, a Licensed Agent that is a business entity can also employ an individual who is a Licensed Agent and who is not a Sub-licensee of the business entity. As a Licensed Agent, the individual can share in the entity agent's commissions, subject to the limitations in § 6409(d) and 11 NYCRR §§ 35.1, 35.4.
- **Q: If a license is applied for after January 1, 2015, can the applicant operate as a title insurance agent while the application is pending?**
 - **A:** No, an applicant who files an application after January 1, 2015 must wait until the application is approved to act a title insurance agent. Only applicants who applied for a license prior to January 1, 2015 can continue to act as a title insurance agent until a determination is made to grant or deny a license. [Chap. 57, Laws of 2014, Part V, § 18(3)]
- **Q: Once an agent is notified its application is approved, what does the agent have to do to start doing business as a Licensed Agent?**
 - **A:** The agent whose application is approved receives an inactive license. The holder of an inactive license must immediately notify the Title Insurer(s) with whom the agent has agency agreements and request that it file a Certificate of Appointment for the agent. Until the Title Insurer files the Certificate of Appointment, the agent cannot act as a Licensed Agent. Filing a Certificate of Appointment is done electronically on the DFS website, so it is imperative that the agent promptly notify all insurers with whom it has agreements to ensure there is no interruption in its business. [N.Y. Ins. Law § 2112(a)]
- **Q: Can an agent that has filed an application to renew its license continue to act as a Licensed Agent pending the issuance of the renewal license.**
 - **A:** Yes, provided the application to renew is submitted before the expiration date of the current license term, the license is continued until renewed or five days after renewal is denied. An application may be filed up to 180 days prior to the expiration of the current license, however, renewal applications filed less than 60 days prior to the expiration of the license term are deemed to be late and are

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subject to an additional ten-dollar fee for late filing. [N.Y. Ins. Law § 2139(i)(7), (10)]

- **Q: If an agent applied for a license, issues title insurance policies prior to receiving a license (other than for applications filed prior to January 1, 2015) or, if approved for a license, before a Certificate of Appointment is filed, does the grant of the license or filing of the Certificate of Appointment validate the agent's conduct in issuing policies and collecting premiums or is the agent in violation of the Licensing Law.**
 - **A:** The Licensing Law does not allow an agent to issue policies and earn a commission for issuing policies prior to the agent becoming licensed and appointed by its insurer(s). The agent has technically violated the Insurance Law and there is no savings provisions that relieves the agent of the violation.
- **Q: If a Licensed Agent allows its license to expire, when must the agent reapply to avoid taking the pre-examination course and the license examination again?**
 - **A:** An Agent can reapply within two years of the date of the expiration of its license [N.Y. Ins. Law § 2139(g)(2)]
- **Q: Where do I find license applications and information?**
 - **A:** <http://www.dfs.ny.gov/insurance/abindx.htm>

2. Sub-licensees:

- **Q: When must a Licensed Agent have a Sub-licensee?**
 - **A:** A business entity, such as a corporation, partnership or limited liability company applying for a license must have at least one Sub-licensee who has a financial or other beneficial interest in the entity. [N.Y. Ins. Law § 2139(b)]
- **Q: Is a financial or other beneficial interest in an entity always an ownership interest?**
 - **A:** No, a beneficial interest can be a profit-sharing arrangement with the Sub-licensee. [DFS Q&A; Q3]
- **Q: What is the purpose of a Sub-licensee?**
 - **A:** A Sub-licensee is the person who has liability for the conduct of the agency and is the only person authorized to act on behalf of the agency. [N.Y. Ins. Law § 2139(b)]

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- **Q: Who can be a Sub-licensee?**
 - **A:** An individual who is an officer or director of a corporation, a partner in a partnership or a member or officer of an LLC can be a Sub-licensee. A Managing Member of a LLC can be a Sub-licensee, but a person although designated as a manager cannot be a Sub-licensee unless the person also has the powers and authority of an officer, partner or member in the entity. For example, an office manager or a department manager cannot be a Sub-licensee unless they are also an officer, partner or member or an equivalent in the licensed entity. [N.Y. Ins. Law § 2139(b)]

- **Q: What does the Sub-licensee have to do to qualify?**
 - **A:** A person listed in the entity license application as a Sub-licensee, although not separately licensed as an agent, is subject to the same requirements as an individual licensee. The proposed Sub-licensee must take the pre-examination course and the licensing examination, except if the proposed Sub-licensee is an attorney at law in New York in good standing. In the case of an application filed within one year of September 27, 2014, the applicant for a license or as a Sub-licensee, does not need to take the pre-examination course or examination if he or she can demonstrate that he or she has performed the functions of a title insurance agent continuously for the previous five years of the initial licensing. An individual can qualify as a Sub-licensee of more than one entity. [N.Y. Ins. Law § 2139(e), (f), (g)(1), DFS Q&A; Q4]

- **Q: Can a Licensed Agent have more than one Sub-licensee?**
 - **A:** Yes, there is no limit on the number of Sub-licensees an entity may have. [N.Y. Ins. Law § 2139(b)]

- **Q: Can I change or add Sub-licensees?**
 - **A:** Yes, however, a charge may be imposed. [N.Y. Ins. Law § 2139(12)]

- **Q: Does a Sub-licensee need to have an individual agent license?**
 - **A:** No, a Sub-licensee does not need a separate individual license. [N.Y. Ins. Law § 2139(b), (g)(1)]

3. Commissions:

- **Q: To whom can a Title Insurer pay a commission?**

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- **A:** A Title Insurer can only pay a commission to an agent that is licensed by the DFS and has a Certificate of Appointment from the Title Insurer. [N.Y. Ins. Law § 2113(a)]

- **Q: Is a written agency agreement with a Title Insurer required?**
 - **A:** Yes, the DFS has stated that an agency agreement between the Licensed Agent and the Title Insurer is required.

- **Q: Can an agent split a commission with another NY Licensed Agent?**
 - **A:** Yes, an agent can split a commission with another Licensed Agent, however, splitting commissions with Licensed Agents is subject to the limitations in N.Y. Ins. Law § 6409(d) and 11 NYCRR § 35.4.

- **Q: Can a Licensed Agent split a commission with an agent that is not licensed by the NY DFS?**
 - **A:** No, Licensed Agents and Title Insurers are prohibited from paying or sharing commissions or other compensation for acting as a title insurance agent except to a Licensed Agent. [N.Y. Ins. Law §§ 2102 (a)(1)(A), 2113(a)]

- **Q: Can a Licensed Agent split a commission with an agent licensed in another state?**
 - **A:** No, an agent licensed in another state is not deemed to be licensed in New York unless the out of state agent is also licensed in New York.

- **Q: Can an agent licensed in another state become licensed in NY?**
 - **A:** Yes, a nonresident agent licensed in a state that offers reciprocity to NY Licensed Agents can apply to become licensed in NY without taking the pre-licensing course or examination **so long as their license is not issued by any of the following states:**

Alabama, Alaska, Arizona, Connecticut, Idaho, Iowa, Kentucky, Montana, Nevada, Oregon, South Dakota Tennessee, Texas, Wyoming

[N.Y. Ins. Law § 2136]

- **Q: Can a Licensed Agent split a commission with the attorney or representative of an insured, if the attorney or representative is also a Licensed Agent?**
 - **A:** Probably not, If a recipient of a share of a commission from a Licensed Agent is a “. . . *person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee, or*

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mortgagee of the real property. . .”, where the attorney Licensed Agent or representative does not perform the functions of a Licensed Agent under § 2101(y)(1), even though the person receiving a share of the commission is also a Licensed Agent, the prohibitions contained in N.Y. Ins. Law § 6409(d) and 11 NYCRR § 35.4 are applicable to the payment. If the splitting of the commission would constitute a rebate or other compensation paid as an inducement for the placement of the title insurance business, under § 6409(d) it may be illegal to split the commission with the Licensed Agent who referred the business. [N.Y. Ins. Law § 6409(d), 11 NYCRR § 35.4(c)]

- **Q: Can an agent split a commission with an unlicensed agent?**
 - **A:** No, neither a Licensed Agent nor a Title Insurer can share or pay a commission to an unlicensed agent. Payment of compensation for actual services rendered based on the usual and customary fee paid for such service may be permitted, subject to N.Y. Ins. Law § 6409(d). [N.Y. Ins. Law §§ 2113(a)]
- **Q: Can an agent pay a commission to a provider of a service or product to the agent?**
 - **A:** No, the provider of a product or service to a Licensed Agent can be paid only the fair equivalent value of the service or product provided, but may not be paid a percentage of the Licensed Agent’s commission. [N.Y. Ins. Law § 2113(a)]
- **Q: What compensation can a Licensed Agent pay to a provider of services or products to the Licensed Agent?**
 - **A:** “§ 6409(d) [does not] prohibit legitimate payments to individuals (such as title closers and abstract companies) who perform substantial service on behalf of a title insurance company or to an attorney who renders the usual and customary services like supervision of a closing, marking up the title policy and providing the curatives to the title insurer.” A “legitimate payment” for the “usual and customary” is a payment that represents the fair, equivalent value of the service rendered or product provided. [Opinion No. 01-10-17, Issued October 19, 2001]

4. Premium Account and Records Requirements:

- **Q: When is an agent required to have a “Premium” account under the Emergency Regulations?**
 - **A:** A Licensed Agent that remits to a Title Insurer premium payments whether received initially in its operating, escrow or attorney IOLA account, must transfer such premiums into a separate “Premium Account” in a New York banking institution. [11 NYCRR § 20.3(b), (b)(1)]

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- **Q: If a Licensed Agent issues policies for more than one insurer must it keep separate “premium accounts” for each of its Title Insurers?**
 - **A:** No, the Insurance Law does not require a Licensed Agent to maintain separate Premium Accounts for the premiums of each of its Title Insurers, provided the funds held for each Title Insurer are reasonably ascertainable from the books and records of the Licensed Agent. [11 NYCRR 20.3(b)(6)]

- **Q: When is a Licensed Agent not required to keep premium received by the Licensed Agent in a Premium Account?**
 - **A:** No Premium Account is required where the premium is paid directly to the Title Insurer and is not received in any account belonging to the Licensed Agent.

- **Q: What does the term “immediate” in 11 NYCRR § 20.3(b)(1), (2) mean?**
 - **A:** The DFS has stated that it interprets the term “immediate” to mean that the payment of premium goes directly from the party paying for the policy to the Title Insurer and not into an account maintained by the Licensed Agent to be remitted to the Title Insurer.

- **Q: May a Licensed Agent rename its Operating Account a “Premium” account to comply with the regulations?**
 - **A:** No, a premium account can only contain the gross (including the agent commission) or the net (not including the agent commission) premium paid, refunds of premium due insureds and interest earned thereon when permitted. The premium account cannot be used as a repository for other funds belonging to the Licensed Agent. The regulations prohibit the making disbursements from the premium account for anything other than to pay the premium due the Title Insurer, the amount of the Licensed Agent’s commission, premium refunds to insureds and permitted interest earned. [11 NYCRR § 20.3(b)(1), (4), (c)]

- **Q: Can a Licensed Agent receive payment of both premium and Licensed Agent’s own funds in a single payment?**
 - **A:** Yes, with the permission of the Title Insurer, an agent can receive and commingle premium and its own funds, subject to the requirement that that Licensed Agent keep the premium funds in a Premium Account. [N.Y. Ins. Law § 2120(a) and 11 NYCRR 20.3(c)]

- **Q: If an attorney agent receives funds in the attorney’s IOLA account, does that comply with the regulations requiring a Premium Account?**
 - **A:** No, the DFS has advised that an IOLA account is no different from any other type of account maintained by a Licensed Agent.

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- **Q: What does it mean that a Licensed Agent must treat funds receive by the agent as “fiduciary funds?”**
 - **A:** Funds held in a fiduciary capacity are funds that are not owned by or for the benefit of the Licensed Agent, excluding the commission due the agent on the gross premium. The Licensed Agent as a fiduciary is required to apply the highest moral standard of conduct in dealing with and safeguarding such funds for the benefit of the Title Insurer and policy holder.

- **Q: Can the Licensed Agent commingle both the Title Insurer’s share of the premium with the Licensed Agent’s commission share in a premium account?**
 - **A:** The regulations permit commingling of the net premium and of the commission portion of the premium. [11 NYCRR § 20.3(b)(5)]

- **Q: Do the regulations contain provisions governing what financial records and information the Licensed Agent must keep and provide?**
 - **A:** Yes, Licensed Agents must familiarize themselves with regulation 11 NYCRR § 20.4 “*Fiduciary responsibility of insurance agents, title insurance agents, and insurance brokers; minimum recordkeeping requirements.*”

5. Penalties:

- **Q: What penalties can be imposed for violating the Insurance Law?**
 - **A:** The superintendent can suspend or revoke a license after a hearing pursuant to N.Y. Ins. Law § 2110 or can impose a fine pursuant to N.Y. Ins. Law § 2127 of five hundred dollars for each offense, and a penalty in a sum not exceeding twenty-five hundred dollars in the aggregate for all offenses in any proceeding. N.Y. Ins. Law § 6409(d) has been amended to impose a penalty of the greater of five-thousand dollars or ten times the amount paid on both the giver and the receiver of an illegal rebate or other compensation, given directly or indirectly as an inducement for, or as compensation for, any title insurance business.

INFORMATION AND FORMS CAN BE OBTAINED FROM THE DFS WEBSITE AT:

<http://www.dfs.ny.gov/insurance/abindx.htm>