



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

Circular Letter No. 23 (2008)
November 19, 2008

TO: ALL INSURERS WRITING HOMEOWNERS' POLICIES IN NEW YORK

**RE: MID-TERM CANCELLATION OF POLICIES BASED UPON RESIDENCE
BECOMING UNOCCUPIED**

STATUTORY REFERENCE: INSURANCE LAW SECTION 3425

The Department has received numerous complaints from consumers whose homeowners' policies were cancelled after insurers claimed that their residences had become unoccupied. The Department investigated these complaints and determined that a number of insurers had improperly cancelled homeowners' policies on the ground that an apparently unoccupied residence constituted a "physical change" in the premises. The purpose of this Circular Letter is to review the relevant sections of the Insurance Law governing mid-term cancellations of homeowners' policies, and to advise insurers of the Insurance Department's interpretation of the law, so as to ensure that homeowners are protected from improper cancellations.

Homeowners' policies are "personal lines insurance" under Insurance Law § 3425. That statute governs cancellation and renewal of most non-commercial property/casualty insurance policies. Such policies may not be cancelled in the middle of the policy term, except for certain reasons specified in § 3425, which must be set forth in the notice of cancellation. In particular, Insurance Law § 3425(c)(2)(E) permits a mid-term cancellation of a personal lines insurance policy due to:

physical changes in the property insured occurring after issuance or last annual anniversary date of the policy which result in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last voluntarily renewed...

The Department's investigation determined that a number of insurers, after apparently determining that residences had become unoccupied, improperly cancelled the owners' policies on grounds that the lack of occupancy constituted "physical changes" within the meaning of § 3425(c)(2)(E). One investigation revealed that an insurer had improperly cancelled the policy of a husband and wife while they were residing in a nursing home.

Insurance Law § 3425(c)(2)(E) applies only when there has been an actual *physical* change to the property that renders the property uninsurable in accordance with the insurer's underwriting guidelines. Physical change occurs only when the dwelling or property has been altered or changed in some manner. (See Opinion of Office of General Counsel No. 04-11-20, November 29, 2004). The fact that an insured is not occupying a residence does not constitute a physical change to the premises within the meaning of § 3425(c)(2)(E).

Similarly, the fact that an insured is not occupying a residence does not, standing alone, constitute grounds for cancellation of a homeowners' policy under Insurance Law § 3425(c)(2)(D). That provision permits an insurer to cancel coverage upon "discovery of willful or reckless acts or omissions increasing the hazard insured against." Whether an insured would be justified in cancelling a homeowners' policy pursuant to § 3425(c)(2)(D) depends on the totality of the circumstances. While lack of occupancy of the premises might be a relevant factor to consider, it is not necessarily a willful or reckless act or omission, which also must be demonstrated.

Nor may insurers use the existence of a foreclosure action as a basis to cancel a homeowners' insurance policy under Insurance Law § 3425(c)(2)(D) or (E). The filing of a foreclosure action does not constitute a willful or reckless act or omission or increase the hazard insured against, nor does it constitute a physical change in the property.

Questions regarding this Circular Letter should be addressed to Deborah Jewell, Senior Examiner, New York State Insurance Department, 1 Commerce Plaza, Albany, New York, 12257, 518-402-2312, djewell@ins.state.ny.us.

Very truly yours,

Steven Nachman
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Frauds and Consumer Services