



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

David A. Paterson
Governor

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Circular Letter No. 9 (2010)
August 9, 2010

To: All Insurers Writing Property/Casualty Policies in New York

Re: Incorrect Amounts Listed on Cancellation Notices for Non-Payment of Premium

STATUTORY REFERENCE: Insurance Law §§ 3425 and 3426

The purpose of this Circular Letter is to clarify for property/casualty insurers that are subject to Insurance Law §§ 3425 and 3426 that a notice of cancellation for non-payment of premium must clearly inform the policyholder of the overdue amount.

It has come to the Department's attention that some insurers are sending to policyholders notices of cancellation for non-payment of premium that include installment payments that are not yet in arrears. Therefore, many insureds believe that they must pay premiums not yet overdue in order to avoid a cancellation for non-payment of premium.

New York Insurance Law § 3425(c) (McKinney Supp. 2009) states in relevant part as follows:

After a covered policy has been in effect for sixty days, or upon the effective date if the policy is a renewal, no notice of cancellation shall be issued to become effective...unless it is based on one or more of the following:

(1) With respect to automobile insurance policies:

(A) nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the insured of the amount due;

* * * *

(2) With respect to personal lines insurance policies:

(A) nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the insured of the amount due;

Regarding commercial lines insurance, Insurance Law § 3426(c) states that:

After a covered policy has been in effect for sixty days unless cancelled pursuant to subsection (b) of this section, or on or after the effective date if such policy is a renewal, no notice of cancellation shall become effective until fifteen days after written notice is mailed or delivered to the first-named insured and to such insured's authorized agent or broker, and such cancellation is based on one or more of the following:

(1) With respect to covered policies:

(A) nonpayment of premium provided, however, that a notice of cancellation on this ground shall inform the insured of the amount due.

In turn, Insurance Law § 3425(a)(10) and Insurance Law § 3426(a)(3) define “nonpayment of premium” as:

...the failure of the named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely, if made within fifteen days after the mailing to the insured of a notice of cancellation for nonpayment of premium.

Because the language of Insurance Law §§ 3425(c)(1)(A), 3425(c)(2)(A) and 3426(c)(1)(A) is identical, the Department construes these provisions in the same manner. Thus, an insured may receive a non-payment of premium notice only if the insured has failed to discharge an obligation in connection with the payment of premiums on a policy of insurance.¹

In addition, in an Office of General Counsel (OGC) Opinion 06-12-08 (December 14, 2006), the Department's OGC found that a notice of cancellation that failed to correctly inform the insured of the amount that was past due constituted a violation of Insurance Law § 3425(c)(1)(A) because any amount not yet due does not provide legal grounds to cancel for nonpayment of premium.

Accordingly, a notice of cancellation for non-payment of premium must inform the policyholder of the overdue amount and that the policyholder must pay that amount in order to avoid a cancellation.

¹ An obligation in connection with the payment of premiums on a policy of insurance may include, in some instances, an installment fee, late payment fee, or reinstatement fee. For a detailed discussion, please see Office of General Counsel Opinion 03-04-31 (April 29, 2003).

While an insurer may notify an insured of an installment payment at the same time that the insurer sends a notice of cancellation, the insurer must make clear that those installment payments are not necessary in order to avoid a cancellation.

Questions regarding this Circular Letter should be addressed to Lisa Bugaj, Examiner, New York State Insurance Department, One Commerce Plaza, Albany, New York 12257, 518-473-8162, lbugaj@ins.state.ny.us.

Very truly yours,

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and Chief, Consumer Services Bureau