



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

The Office of General Counsel issued the following opinion on April 11, 2001 representing the position of the New York State Insurance Department.

Re: Broker of Record Letters

Question Presented:

Are the procedures pertaining to broker of record letters governed by the Insurance Law?

Conclusions:

No. The Insurance Law does not specifically address the procedures pertaining to broker of record letters.

Facts:

The inquirer stated that the industry standard pertaining to broker of record letters is as follows:

A broker submits a broker of record letter on behalf of an insured to the insurer. The incumbent broker has 10 days to obtain a countermand letter in order to maintain the account.

If such a letter is not obtained or is obtained after 10 days, the new broker "owns" the account and is therefore entitled to receive the commission due.

Analysis:

The Insurance Law does not specifically address the procedures pertaining to broker of record letters. As a general rule, a broker has earned his commission when the policy has been issued and the premium is paid. However, there are exceptions to this rule. This inquiry concerns an aspect of the relationship between an insurer and a broker that is contractual in nature, and does not involve the administration of the insurance law. Accordingly, the Department, as an administrative agency, does not consider it to be within its province to express an opinion on this subject. See *Western National Insurance Co. v. Haph Brokerage*, 277 A.D. 6, 97 N.Y.S.2d 47 (1st Dep't. 1950) aff'd 302 N.Y. 678 (1951) for further guidance.

For further information, you may contact Attorney Pascale Joasil at the New York City office.