



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

The Office of General Counsel issued the following opinion on September 10, 2003, representing the position of the New York State Insurance Department.

Re: Non-renewal notices of unauthorized insurers

Question Presented

Are unauthorized insurers subject to the restrictions of N.Y. Ins. Law § 3426 (McKinney 2000) regarding non-renewals?

Conclusion

No. Pursuant to N.Y. Ins. Law § 3426(1)(2) (McKinney 2000), policies issued by unauthorized insurers through excess lines brokers are specifically exempted from the requirements contained in N.Y. Ins. Law § 3426 (McKinney 2000). However, in the case of fire insurance coverage provided under the commercial property/casualty policy, the insured must receive five days' written notice of cancellation pursuant to N.Y. Ins. Law § 3404 (McKinney 2000).

Facts

No facts were provided. In asking the above question, the inquirer referred to Chapter 220 of New York Insurance Law. Such a section does not exist. However, N.Y. Ins. Law § 3426 (McKinney 2000) addresses the issue raised by the inquirer's question.

Analysis

N.Y. Ins. Law § 3426(1)(2) (McKinney 2000) states, in relevant part: "This section shall not apply to . . . policies written on an excess line basis, . . .". However, the Department has determined that N.Y. Ins. Law § 3404 (McKinney 2000), which sets forth the standard policy provisions for a fire insurance contract, applies to policies written by an unauthorized insurer through an excess line insurance broker. N.Y. Ins. Law § 3404(e) (McKinney 2000) requires that a fire insurance policy include the following cancellation provision: "This policy may be cancelled at any time by this Company by giving to the insured a five days' written notice of cancellation. . . ." Pursuant to New York Insurance Law § 3404 (McKinney 2000) an insurer may provide more favorable coverage by giving the insured more than five days' written notice. Thus, at least with respect to fire insurance coverage, the insurer must provide, at a minimum, five days' written notice of cancellation to the insured.

For further information one may contact Senior Attorney Susan Dess at the New York City Office.