

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

George E. Pataki
Governor

Howard Mills
Superintendent

**Circular Letter No. 9 (2006)
April 4, 2006**

TO: All Licensed Insurance Brokers, Agents and Consultants, Excess Line Association of New York, and Insurance Producer Organizations

RE: Insurance Law § 2119 Agreements

STATUTORY AUTHORITY: N.Y. Ins. Law §§ 2110, 2119

It has come to the attention of the Department that, with respect to service fee agreements, some insurance brokers have not been complying fully with the requirements of N.Y. Ins. Law § 2119. Licensees must comply with the following:

Section 2119 Service Fee Agreements Must be Separate from Premium Finance Agreements

The Department has investigated several complaints in which broker service fees were included in premium finance agreements that were entered into by the insureds and premium finance agencies. The service fees were identified in the premium finance agreement as "Section 2119 charges." The insureds were unaware that the broker had charged these fees and were confused as to whether the recipient of the fees was the premium finance agency or the broker.

N.Y. Ins. Law § 2119(c)(1) (McKinney Supp. 2006) prohibits an insurance broker from receiving:

"any compensation, other than commissions deductible from premiums on insurance policies or contracts, from any insured or prospective insured for or on account of the sale, solicitation or negotiation of, or other services in connection with, any contract of insurance made or negotiated in this state or for any other services on account of such insurance policies or contracts, including adjustment of claims arising therefrom, unless such compensation is based upon a written memorandum, signed by the party to be charged, and specifying or clearly defining the amount or extent of such compensation."

Section 2119 agreements must have the express written consent of, and be signed by, the party to be charged. The agreement must specify or clearly define the amount or extent of the fees being charged. The legislative purposes of Section 2119 are not satisfied where the only writing that contains the broker service fee is an agreement to which the broker is not a party, such as a premium finance agreement between an insured and a premium finance agency. Further, the requirements of Section 2119 apply regardless of the amount of the compensation the broker charges for the services provided and the requirements cannot be waived. Accordingly, an insurance broker may not receive any such compensation unless there is a written memorandum that is entered into between the party to be charged and the broker.

Broker Service Fees May be Percentage of Premium

An insurance broker may charge a service fee that is a percentage of the premium in a Section 2119 agreement, provided the agreement clearly explains whether changes in coverage, cancellation of the policy, audits or other factors will result in changes in the fee.

Licensees are also reminded that service fees should be reasonable¹ and different insureds should not be charged different amounts for the same services. Section 2119(c) agreements must be retained by the licensee for not less than three years after fully performing the services.

Broker Service Fees Must be Clearly Delineated

Forms that include both service fees and other expenses to the insured but that do not clearly indicate which of the amounts listed are broker service fees are impermissible. While a service fee agreement need not necessarily be a separate form, it should not confuse or mislead the insured as to the nature of the charges or whether a particular charge is a service fee or otherwise.

The discussion above is equally applicable to consulting agreements that may be entered into in New York by a licensed insurance agent, broker or consultant pursuant to Section 2119(a).

If you have any questions regarding this Circular Letter please contact Principal Attorney, Paul A. Zuckerman, at (212) 480-5286.

Very truly yours,

Susan Donnellan
Deputy General Counsel

¹Please note that for certain policies written through the New York Automobile Insurance Plan (NYAIP), the producer is limited to a \$40.00 service fee, but may be reimbursed for certain expenses. See Section 21(C) of the New York Automobile Insurance Plan of New York (NYAIP) rules.