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Bulletin 391

Personal Lines Agency Terminations and Book Rollovers

(Supersedes Bulletin 316)

This Bulletin addresses questions that have persisted since at least the early 1990s[1] about the duties that insurers and their appointed agents owe their personal lines insurance customers when the appointment agreement between an insurer and its agent ends, for whatever reason, or when a producer considers moving some or all of an insurer's policies to another insurer. For insurers, the Maine Cancellation Control Acts define those duties.[2] While neither Cancellation Control Act applies directly to producers, producers also need to understand the rights that these statutes give insureds.

Insurers

One of an insurer's basic duties under either Cancellation Control Act is to allow the insured to keep the policy in place unless the insurer has a legal reason to terminate it.[3] The fact that the insurer and producer might end their business relationship is not a lawful reason to terminate a policy under either statute. Nevertheless, some insurers still send nonrenewal notices to insureds affected by a producer's termination. This violates the Cancellation Control Act, and insurers should take steps to communicate the information described below to their insureds in order to comply with the law.

Many appointment agreements give the producer certain ownership rights as to customer accounts. However, such rights do not affect the insured's statutory right to renew the policy. Under Maine law that right belongs to the insured. Unless the insured chooses to change insurers, or unless independent grounds for nonrenewal or cancellation exist, the Cancellation

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[1] Bulletin 204, issued June 5, 1992, first addressed this topic. Bulletin 316, issued November 21, 2002, restated the Superintendent's concerns.

[2] The Cancellation Control Acts that apply to personal lines are the Automobile Insurance Cancellation Control Act, at 24-A M.R.S. §§ 2911–2924, and the Property Insurance Cancellation Control Act, at 24-A M.R.S. §§ 3048–3060. The cancellation control laws that apply to most commercial lines policies are outside the scope of this Bulletin because they do not require good cause for nonrenewal if the insurer provides timely notice.

[3] This right begins when the policy has been in effect for a certain time, known as the initial underwriting period. It is 60 days for a personal automobile policy, 90 days for a homeowners policy, and 120 days for a policy on a second residence expected to be unoccupied for more than three months in any 12-month period.

Control Acts require the current insurer to continue coverage. Therefore, the insurer must tell the insured that he or she has the right to continue his or her current coverage.

An insurer involved in one of these transactions may not rely on the duplicate coverage provisions of the Cancellation Control Acts[4] as an alternative to giving its insureds proper notice of their right to stay with their current insurer. These statutes allow an insurer to terminate its policy "by failure to renew" without complying with the applicable notice statute if its insured obtains a second policy with "equal or more extensive coverage" on a risk that the first policy covers. These statutes mean to sort out which policy would respond to a claim and to protect the insured against double billing, when the insured has decided to move his or her coverage elsewhere. Furthermore, they apply only if the second policy's coverage is at least as good as the first policy's. Because comparing coverage features among modern policies is difficult, especially in homeowners insurance, the first insurer is unlikely to be able to make that determination with any certainty.

Producers

A producer has a general obligation of competence under 24-A M.R.S. § 1420-K. A competent producer must understand the rights that the insured has under Maine insurance law. Therefore, whenever a producer's appointment agreement with an insurer ends or a producer considers moving a group of policies from one insurer to another, the producer may not move an insured's business without the insured's permission.

Furthermore, one of a producer's duties under Section 1420-K is to avoid misrepresentations and deceptive practices. Notwithstanding any agreement that the producer has with the current insurer as to ownership of customer accounts, a producer may not, by omission or otherwise, misrepresent to an insured his or her right to continue coverage with the current insurer. Because Maine law allows an insurer to cancel coverage at will during its initial underwriting period, a producer offering coverage with a new insurer should also explain whether that insurer has agreed to waive its underwriting rights. Any producer considering such a move should also be aware of how the insured's coverages and premiums will change and be prepared, if asked, to explain how those changes will affect the insured. The producer should take steps to communicate the information described below to his or her customers in order to meet the requirements of Section 1420-K.

Communicating With the Insured

Insurers and producers involved in these transactions are encouraged to coordinate with each other so that the information they give their customers is clear, accurate, and consistent. This process should include a system for communicating their customers' preferences for placing coverage, such as "lost policy release" forms for insureds who elect to replace their coverage. The parties should allow enough time to avoid unnecessary renewals if the policyholder intends to replace his or her current coverage.

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[4] See 24-A M.R.S. §§ 2918 and 3052.

Communicating accurate information about this right is essential so that the insured can decide on an informed basis whether to continue or replace coverage. At a minimum, this information should include the following:

- The insured has the right to decide whether to stay with his or her current insurer or to apply for coverage with a different insurer. If the insured decides to apply for coverage elsewhere, the insured may also use a different agent.

- If the insured decides to remain with the current insurer, then that insurer must arrange to write the account directly or with another appointed producer. If the insured decides to remain with the terminated producer, then the insured must apply to another insurer for coverage.

- If the insured decides to apply to a new insurer, whether or not through the terminated producer, the new insurer may reunderwite the insured. This means that the new insurer may reject the insured's application or cancel the insured's new policy for any reason during the periods mentioned in footnote 2 above. Reunderwriting may involve risk to insureds. The producer must explain those risks clearly, unless the new insurer has unconditionally agreed to accept the insured's account and waived its underwriting rights.

Anyone having questions about Maine's cancellation and nonrenewal laws should contact the Bureau of Insurance at (207) 624-8475 or toll-free in Maine at (800) 300-5000.

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NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.