

August 15, 1960

SUBJECT: INSURANCE

WITHDRAWN

TO ALL PROPERTY INSURERS AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF NEW YORK

RE: Premium Finance Plans

This Department recently made a survey of premium finance plans operating in New York State. The results of the survey indicate the need of correction of certain aspects of the practices of some finance plans. In addition, the enactment, effective July 1, 1960, of Banking and Insurance Law amendments dealing with premium financing necessitates changes by insurers in other aspects of their finance activities.

Your attention is particularly directed to the following:

1. Cancellation Procedures. Notice of cancellation must be given in accordance with the terms of Section 576 of the Banking Law. The basis of cancellation must be short rate when it is effected pursuant to a premium finance agreement which "contains a power of attorney or other authority (emphasis supplied) enabling the premium finance agency to cancel any insurance contract or contracts listed in the agreement." Such "other authority" includes, by way of illustration, separate agreements between a finance agency and a debtor, and between the finance agency and an insurer, authorizing the finance agency to cancel a credit agreement for default and to obtain the return premium from the insurer. When such authority is exercised and the insurer in turn cancels the financed insurance policy, such cancellation must be on the short rate basis.

In the case of direct financing by an insurer, default by the insured leading to cancellation by the company is equivalent to a request of the insured to cancel and such cancellation should also be effected on the short rate basis. Uniformity in this respect will avoid the discrimination inherent in differing cancellation practices in third party and direct company finance plans.

2. Guarantees to Finance Agencies. Since the third party assignee of a return premium has no greater standing than the insured, guarantees to banks and other finance instrumentalities by insurers against loss from default or from a lower rate of return than anticipated constitute discrimination against insureds who do not require credit. Such arrangements should be eliminated as regards premium financing in this State.

3. Down Payments. The requirement of a sufficient down payment to cover the short rate earned premium at all times would eliminate most of the demand for guarantees. It would also avoid the possibility of discrimination against insureds on a cash basis because of the bad debts incurred on insureds with insufficient unearned reserves securing their premium notes.

4. Interest charges. All company plans should review their interest rates and service charges to ensure full compliance with the new statutes.

5. Transactions with Unauthorized Premium Finance Agencies. Section 153 of the New York Insurance Law prohibits an authorized insurer from accepting premiums advanced under a premium finance agreement from those not permitted to do so under Article XII-B of the Banking Law.

6. Informal Instalment Plans. A few mutual insurers make use of instalment plans which are not part of the policy or of any rate filing and which are not evidenced by notes or other types of premium finance agreement, pursuant to subdivisions 5 and 6 of Section 70 of the New York Insurance Law. Uncollected premiums under these plans are not considered to be admissible assets after expiration of a period of ninety days from policy inception, as prescribed by Section 70(4) of the New York Insurance Law.

Kindly acknowledge receipt of this letter by September 15, 1960, noting your reply for attention of Mr. David Wohlner, Principal Examiner, Property Bureau. It is also requested that those insurers whose premium plans or practices are not in accord with the foregoing in this State promptly notify Mr. Wohlner of corrective changes effected.

Very truly yours,

[SIGNATURE]

Matthew A. Campbell

Deputy Superintendent of Insurance