



**STATE OF NEW YORK  
INSURANCE DEPARTMENT  
160 WEST BROADWAY  
NEW YORK, NEW YORK 10013**

---

**Circular Letter No. 14 (1995)  
August 23, 1995**

**TO: All Licensed Property Casualty Insurers**

**RE: Force-Placed Insurance**

In response to a request from the insurance industry, the Insurance Department is issuing this Circular Letter to identify and resolve several problems in connection with force-placed insurance. For example, payments, characterized by the parties as reimbursement for administrative services, have been made by insurers to mortgage lenders. Another problem we have noted is that the force-placed coverage often exceeds the lender's insurable interest.

Force-placed insurance protects a lender's interest in the borrower's property when the borrower's insurance policy containing a standard mortgage clause has lapsed. Generally, the lender is the named insured and the coverage is limited to the lender's interest, namely, the loan balance. However, some programs provide for dual interest policies issued to the borrower and contain a standard mortgage clause in favor of the lender. In some cases, governmental guarantors or secondary market lenders require that coverage be on a replacement value basis. These dual interest policies may be appropriate where the insurance clause in the mortgage agreement actually provides for force placement of "replacement value" coverage.

Force-placed policies should be limited to the improvements (e.g. buildings) on the property and limited in amount in accordance with the limits set forth in the insurance clause of the mortgage agreement. Force-placed insurance should not cover the personal property or the personal liability of the borrower, as the placement of such coverage on behalf of the borrower would place the lender in the position of acting as an unlicensed broker in violation of § 2102(a)(1) of the Insurance Law.

Force-placed policies insuring only the lender may be written covering a lender's entire portfolio. However, where the policy covers the borrower as well, separate policies must be issued. One policy may not cover the lender and multiple borrowers since such a policy would be a group insurance policy of a kind not authorized by statute [11 NYCRR 153 (Regulation 135)].

Insurers may not reimburse lenders for such services as tracking insurance coverage, obtaining force-placed coverage where voluntary coverage lapses, paying the premium, and recovering the amount of the premium from the borrower. This applies whether the reimbursement is direct or indirect, through an affiliate, or in the form of money or free or below-cost services. In performing these services, the lender acts in its own interests. When the lender receives payment for such services, the lender may be acting as an insurance agent or broker without a license in violation of §

2102 of the Insurance Law. Moreover, where the lender is an insured under the policy, the payment by the insurer to the lender constitutes a rebate in violation of § 2324(a) of the Insurance Law. It is also a violation of § 2324(a) for the insured to knowingly receive, directly or indirectly, any such rebate, or special favor or advantage.

Insurers working through agents or brokers affiliated with lenders should pay particular attention to §§ 2501, 2103(i), 2104(d)(3), and 2324(a) and (b) of the Insurance Law. Section 2501 prohibits any licensed insurance agent or broker who is owned or controlled, directly or indirectly, by a bank from negotiating any policy of insurance covering real or personal property which is the subject matter of, or security for, a loan or extension of credit made by the bank or by any other bank which is owned or controlled, directly or indirectly, by such bank. Sections 2103, 2104, and 2324 place restrictions on the amount of commissions an agent or broker may receive on policies covering risks of affiliates.

All insurers with force-placed insurance programs are advised to review such programs in consideration of the information contained in this Circular Letter and to make amendatory filings as may be necessary no later than October 31, 1995.

This Circular Letter should be acknowledged in writing no later than September 15, 1995, to Mr. John A. Owens, Insurance Examiner, Property/Casualty Insurance Bureau, 160 West Broadway, New York, NY 10013. Please direct any questions concerning this Circular Letter to Mr. Owens (Fax 212-602-8825, Voice 212-602-8817).