



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

**Supplement No. 1 to
Insurance Circular Letter No. 14 (1995)
August 21, 2013**

TO: All Licensed Insurance Producers

RE: Force-Placed Insurance; Insurance Tracking Services

STATUTORY REFERENCES: Insurance Law §§ 2104, 2119, 2324(a), and 2502(a)(1)

I. Summary

It has come to the Department's attention that insurance producers that are not affiliated with insurers are offering services to mortgage servicers and lenders, for a reduced fee or no separately identifiable charge, whereby the insurance producer tracks insurance policies covering properties on which the mortgage servicer or lender is the mortgagee under mortgages entered into by a lender with property owners.

Insurance Law § 2324(a) prohibits, among other things, a licensed insurance producer or any person acting on behalf of the insurance producer from directly or indirectly paying or offering to pay an insured any rebate from the insurance premium specified in the insurance policy or contract, or giving or offering to give any valuable consideration or inducement, not specified in the insurance policy or contract, except that the insurance producer or other person may give or offer to give any valuable consideration not exceeding \$25 in value that is not specified in the policy or contract.

An insurance producer, including an excess line broker, that is not an affiliate of an insurer and offers a mortgage servicer or lender, for a reduced fee or no separately identifiable charge, to track insurance coverage that the producer did not sell, solicit, or negotiate would thus violate Insurance Law § 2324(a).

II. Discussion

The purpose of this supplement to Circular Letter No. 14 (1995) is to provide guidance and clarification to all licensed insurance producers regarding the provision of insurance tracking services for a reduced fee or no separately identifiable charge.

Insurance Law § 2324(a) applies to property/casualty insurance and, among other things, prohibits a licensed insurance producer or any person acting on behalf of the insurance producer from directly or indirectly paying or offering to pay an insured any rebate from the insurance premium specified in the insurance policy or contract, or giving or offering to give any valuable consideration or inducement, not specified in the insurance policy or contract. However, an

insurance producer or other person may give or offer to give any valuable consideration, including merchandise or periodical subscriptions, not exceeding \$25 in value that is not specified in the policy or contract.

The former Insurance Department stated in Insurance Circular Letter No. 9 (2009), among other things, that apart from an insurance broker's compensation agreement entered into in accordance with Insurance Law § 2119, an insurance producer may provide a service not specified in the insurance policy or contract to an insured or potential insured for a reduced fee or no separately identifiable charge without violating the anti-rebating and inducement provisions of the Insurance Law only if:

1. the service directly relates to the sale or servicing of the policy or provides general information about insurance or risk reduction; and
2. the insurance producer provides the service in a fair and nondiscriminatory manner to like insureds or potential insureds.

It has come to the Department's attention that insurance producers that are not affiliated with insurers are offering to track insurance policies covering properties on which a mortgage servicer or lender is the mortgagee under mortgages entered into by the lender with property owners. The insurance producers provide such services to mortgage servicers or lenders for a reduced fee or no separately identifiable charge. When a mortgage servicer or lender is a mortgagee, the mortgage servicer or lender typically will require the property owner to obtain property insurance ("voluntary insurance") on the property in order to protect the mortgage servicer's or lender's interest in the mortgage. While the mortgage servicer or lender may require the property owner to purchase insurance, the mortgage servicer or lender may not require the property owner to obtain the insurance from any specified insurer. See Ins. Law § 2502(a)(1). Although the voluntary insurance policy does not typically name the mortgage servicer or lender as an additional insured, under Insurance Law § 2104, the required mortgagee clause is deemed a separate contract and the mortgagee becomes, in essence, an insured under the policy.

If the insurance producer determines that the voluntary insurance on the property has lapsed or otherwise terminated, and if the mortgage servicer or lender does not advance the premium for the homeowner's voluntary insurance, then the insurance producer will "force-place" insurance on behalf of the mortgage servicer or lender. Typically, the insurance producer has not sold, solicited, or negotiated the voluntary insurance policies that it is tracking. Rather, the insurance producer offers this service as an incentive to obtain the force-placed insurance business.

Any insurance producer, including an excess line broker, that is not affiliated with an insurer and offers to track insurance coverage under the foregoing conditions would violate Insurance Law § 2324(a) because the tracking services are "valuable consideration" and the insurance producer is not servicing a policy that the producer sold, solicited, or negotiated. The purpose of offering the tracking services under these conditions is to induce the mortgage servicer or lender to procure force-placed insurance through the producer. While Insurance Law § 2324(a) permits an insurance producer to give or offer to give any valuable consideration not

exceeding \$25 in value that is not specified in the policy or contract, insurance tracking services likely exceed \$25 in value.

III. Conclusion

Any insurance producer, including an excess line broker, that is not affiliated with an insurer and offers a mortgage servicer or lender, for a reduced fee or no separately identifiable charge, to track insurance that the producer did not sell, solicit, or negotiate would violate Insurance Law § 2324(a).

Please direct any questions regarding this circular letter to Brian Montgomery, Associate Counsel, at Brian.Montgomery@dfs.ny.gov or 212.480.2296.

Very truly yours,

Joy Feigenbaum
Executive Deputy Superintendent
Financial Frauds and Consumer Protection Division