

QUESTION: We received a 220 letter via email on October 26, 2022 for a January 1, 2023 renewal. When we receive these, we automatically insert them in our management system and make a notation. It seems the agent (we are the broker) indicated in the email that, due to COVID, they could not mail the notice to the insured and they wanted us to mail it. However it appears we may not have. There's no indication in our file that we did mail it on to the insured. Isn't it the carrier's responsibility and/or the agent's to do so? What is our obligation?

ANSWER: Your office has ZERO obligations to forward a conditional renewal notice to an insured. The law very explicitly places that obligation on the insurer. If the insurer fails to provide a timely notice to the insured, the policy remains in full force and effect subject to the same terms, conditions and rates as the expiring.

The relevant law is [subsection \(e\) of Section 3426 of the New York Insurance Law](#), titled *Commercial lines insurance; cancellation and renewal provisions*. Be aware that several types of policies are exempt from this section of the law, including Workers' Compensation, surety, inland and ocean marine, excess line policies, and others. Subsection (e) states:

(e)(1) A covered policy shall remain in full force and effect pursuant to the same terms, conditions and rates **unless written notice is mailed or delivered by the insurer to the first-named insured, at the address shown on the policy**, and to such insured's authorized agent or broker, indicating the insurer's intention: ...

(B) to condition its renewal upon

- change of limits,
- change in type of coverage,
- reduction of coverage,
- increased deductible or addition of exclusion, or
- upon increased premiums in excess of ten percent (exclusive of any premium increase generated as a result of increased exposure units, pursuant to subsection (d) of this section, or as a result of experience rating, loss rating, retrospective rating or audit),

except that with respect to an excess liability policy, the insurer may also, consistent with regulations promulgated by the superintendent, condition its renewal upon requirements relating to the underlying coverage, in which event the conditional renewal notice shall be treated as an effective notice of nonrenewal if such requirements are not satisfied as of the later of the expiration date of the policy or sixty days after mailing or delivery of such notice; ...

The law's text requires the insurer to mail or deliver the notice to the first-named insured, and to provide a copy to the insured's authorized broker. It does not obligate the broker in any way to mail or deliver the notice to the insured. Unless you have a contract with the agent that creates this obligation for you, providing the notice was not your responsibility.

FOLLOW UP QUESTION: This policy is thru a standard market but it includes besides the General Liability, Property and Auto, Inland Marine and Excess, Law Enforcement, Public Officials and Employee Benefits. I am concerned what the “others” refers to which are exempt from the law. Since this policy includes all those coverages exempt by law, is there some sort of cut out to the law when coverages are bundled like this?

ANSWER: I think the policy you described is subject to the requirements.

Subsection (l)(2) of Section 3426 states that the entire section does not apply to:

- Assigned risk auto policies
- New York Property Insurance Underwriting Association (AKA “FAIR plan”) policies
- Medical Malpractice Insurance Association policies
- Surety bonds
- Workers Compensation policies
- Financial guaranty insurance
- Mortgage guaranty or credit insurance
- Marine insurance
- Legal services insurance
- Reinsurance
- Excess line policies
- Personal lines policies

However, the wording in subsection (l)(2) (see page 8 of the document I linked to above) says, “This section shall not apply to ... policies ***principally*** marine insurance as defined by [paragraph twenty of subsection \(a\) of section one thousand one hundred thirteen of this chapter ...](#)”

[Emphasis added] Since the law uses the word “principally,” I don’t think a package policy that happens to include inland marine coverage would be exempt.

Also, the very beginning of Section 3426 states that it applies to “covered policies,” which are defined as “a policy of commercial risk insurance, professional liability insurance or public entity insurance ...” [Section 107 of the New York Insurance Law](#) defines what those terms mean:

(a) In this chapter, unless the context otherwise requires: ...

(47) “**Commercial risk insurance**” means insurance not subject to section three thousand four hundred twenty-five [NOTE: *Personal lines policies*] of this chapter issued or issued for delivery in this state, on a risk located in this state, insuring any of the following contingencies:

(A) loss of or damage to real property;

(B) loss of or damage to personal property;

(C) losses or liabilities arising out of the ownership, operation or use of a motor vehicle;

(D) liabilities of persons acting as officers or directors; or

(E) other liabilities, including product liability, for loss of, damage to, or injury to persons or property. ...

(49) "Professional liability insurance" means insurance covering liability arising out of the practice of any profession for which a license is required by a governmental authority of this state or, with respect to treatment of patients, arising out of the operation of a duly certified hospital.

(50) "Public entity insurance" means commercial risk insurance issued to a public entity.

(51) "Public entity" means:

(A) the state of New York;

(B) a county, city, town, village or any other political subdivision or civil department or division of the state;

(C) a school district, board of cooperative educational services or any other governmental entity or combination or association of governmental entities operating a public school, college, community college or university;

(D) a fire district, fire company, volunteer fire department, or any other entity that contracts with a municipality or other political subdivision to provide fire protection;

(E) a public library, as defined in section two hundred fifty-three of the education law, authorized to operate in this state;

(F) a public corporation, including a municipal corporation, district corporation or public benefit corporation;

(G) an improvement district, special district or other district authorized by the village law, town law, county law or any other law;

(H) a public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law; or

(I) any other governmental instrumentality or unit in the state of New York.

The policy you described would likely fall within the definitions of both "commercial risk insurance" and "public entity insurance." Therefore, I believe it's a covered policy and subject to all the requirements in Section 3426.