

QUESTION: We had an insurer cancel a Free Trade Zone policy mid-term. The reason of cancellation was noncompliance with inspection safety recommendations. Per the attached notice, they relied on New York Insurance Law Section 3426 (c) (1) 4.D. Is this justifiable?

ANSWER: It really depends on what the full story is. The notice quotes the law accurately. [Section 3426 of the New York insurance Law](#), titled *Commercial lines insurance; cancellation and renewal provisions*, states:

(a) *Definitions.* As used in this section:

(1) "Covered policy" means, for purposes of this section, a policy of commercial risk insurance, professional liability insurance or public entity insurance, and shall include any contract, certificate or other evidence of such insurance. ...

(c) After a covered policy has been in effect for sixty days unless cancelled pursuant to subsection (b) of this section, or on or after the effective date if such policy is a renewal, no notice of cancellation shall become effective until fifteen days after written notice is mailed or delivered to the first-named insured and to such insured's authorized agent or broker, and such cancellation is based on one or more of the following:

(1) With respect to covered policies: ...

(D) after issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period; ...

Based on (c)(1)(D) above, the insurer may cancel the policy mid-term if all the following are true:

- The insured has committed an act or failed to commit an act or violated a policy condition that "substantially and materially" increases the hazard insured against
- The act or omission occurred after the current policy period began
- The insurer discovered the act or omission after the policy effective date

For example, if:

- the insurer performed a loss control inspection after the policy's inception date, and
- they found conditions that make the risk uninsurable to them, and
- they recommended that the insured fix the problem, and
- the insured failed to do so, then

the insurer is within its rights to cancel the policy. If the condition existed before the policy took effect, the insurer is not within its rights to cancel. Instead, it must prepare to send a non-renewal notice within the time frame prescribed in [subsection \(e\) of Section 3426](#).