

**Question:** I know that historically we had to have the insureds sign off on receiving policies electronically but I wanted to know if there have been any updates to how we can do this. Specifically, are we permitted to send e-mails to our clients that state going forward we will be sending them their policies electronically *unless* we hear from them that they would like to receive paper copies? Or is the signed active consent still the only option?

**Answer:** The law does not get that specific. [Section 309 of the New York State Technology Law](#), which applies to all businesses and government agencies in the state (not just insurance agencies,) simply states, “Nothing in (the [Electronic Signatures and Records Act](#)) shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law.” The NYS Department of Financial Services has interpreted that to mean that an insurer or producer must obtain an insured’s consent before sending a policy to the insured electronically. See the [DFS Office of General Counsel advisory legal opinion of August 7, 2009](#):

“Consequently, an insurer that sends a policy to an insured electronically without first obtaining the insured’s consent may not cure the violation simply by offering the insured the option of insisting upon receiving a paper copy of the policy. ... even if the insurer electronically sends the insurance policy to the insurance producer, the producer may not electronically forward the policy to the insured unless the insured consents to receive the policy in that format.”

Our [E&O defense attorneys](#) have written:

“If an agency or brokerage desires to e-mail policies to an insured, or deliver them by some other electronic means, the agency or brokerage should first obtain the insured’s written consent and understanding that from this point forward their policies will be sent electronically and, as a consequence, they will not receive a paper copy. In New York, an agency or brokerage is required to obtain an insured’s prior written consent before delivering insurance policies electronically. However, even when a signed acknowledgement is not required, it is a good practice for an agency or brokerage to obtain one before delivering insurance documents electronically.”

The [Electronic Policy Delivery page](#) in the Answer Center of our website contains additional information and a sample consent form that the attorneys have approved.