

November 5, 2018

**RE: ELECTRONIC DELIVERY OF INSURANCE DOCUMENTS**  
**(Revised/Supersedes November 1, 2018 Mailings)**

**I) Licensed (authorized) Insurer Transactions**

It is the position of the New York Department of Financial Services (DFS) that a licensed insurance company (or the insurance agent or broker) may electronically transmit an **insurance policy** to an insured provided that:

- **the insured has consented to engage in an electronic transaction,**
- **the policy conforms to all of the regulatory requirements of the New York Insurance Law (NYIL), NY Regulations and any other applicable laws, and**
- **formatting requirements prescribed by the NYIL, such as font size, type, style, clarity, prominence, attachments, placement and color, may be met electronically if the insurer (sender) and insured (recipient) utilize a computer technology that ensures the creation, transmission, and receipt of a document equivalent (a true and accurate representation) to that prescribed by NYIL requirements.**

The DFS has opined that **endorsements (when issued in compliance with all the requisites and statutory provisions), binders, applicable forms, certificates of insurance and premium bills** may be transmitted electronically provided the insured consents to such receipt.

**II) New York Has Not Yet Approved E-Delivery of Notices**

Most statutory requirements contained in the NYIL may be met in an electronic environment; most existing provisions of the NYIL do not pose any impediment to electronic commerce. However, there are certain statutes that include mailing provisions or requirements that, without amendment or further regulatory interpretation, may present obstacles to electronic commerce. (e.g. statutory cancellation or non-renewal notice requirements<sup>1</sup>)

**III) Excess Line Insurer Transactions**

The DFS has opined the following regarding the use of electronic commerce in excess line transactions:

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<sup>1</sup> **Electronic Delivery Bill (A1683B/S2526B)** - This bill would allow property/casualty insurers to electronically deliver insurance notices (e.g. cancellation/non-renewal notices) and documents currently required to be mailed, to policyholders who consent to receive documents by electronic means. The bill passed both houses. However, the Governor's Office has raised concerns over what they view as "the lack of consumer protections", so it may not be signed.

- The E&S insurer may electronically transmit insurance policies and documents<sup>2</sup> **ONLY to the NY licensed excess line broker.**
- The E&S insurer **may not "mail/e-mail"** insurance policies and documents from outside the state **directly to New York insureds**, as this would be viewed as a violation of NYIL Section 2117 and not fit the so called NYIL Section 1101 "mail order exception."
- **Only the excess line broker** may transact (including electronically) with the E&S insurer in procuring the insurance coverage. (e.g. the excess line broker may e-mail insured's completed application to the E&S insurer.)
- The excess line broker may electronically transmit the insurance policy and documents directly to the insured or to the producing broker for delivery to the insured, but only if the insured has consented to engage in an electronic transaction.
- If the insured does not consent to receiving the insurance policy and documents electronically the excess line broker **may charge a fee for providing paper copies.** Any fee should be included on the "Total Cost Form".
- The "Total Cost Form" may be signed using an e-signature but only if the insured consents to engage in an electronic transaction.

### **Conclusion**

The New York Department of Financial Services (DFS) has consistently encouraged the use of electronic transactions in connection with the marketing and sale of insurance including the use of electronic signatures. [See N.Y. Circular Letter No. 33 (1999), Supplement No. 1 to Circular Letter No. 33 (1999) and Circular Letter No. 5 (2001)].

The DFS's position regarding electronic insurance transactions are based on provisions contained in two relevant laws: the NY State's "Electronic Signatures and Records Act (ESRA)" and the federal "Electronic Signatures in Global and National Commerce Act (E-Sign)."

Both laws establish the legal validity of electronic records and signatures, and set forth the framework for legal electronic transactions. Both sets of laws advise that the consumer has to affirmatively consent to the use of electronic records and signatures unless otherwise provided by law.

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<sup>2</sup> Documents **include** - endorsements (when issued in compliance with all the requisites and statutory provisions), binders, applicable forms, certificates of insurance and premium bills