

November 5, 2024

RE: INSURER AND BROKER FEES

ELANY has received questions from brokers regarding the correct characterization and reporting of insurer and broker fees.

General Guidance

First and foremost, fees charged by an excess line insurer are subject to premium tax, while fees charged by a broker are not. Fees paid to a Managing General Underwriter that are retained by the MGU and not remitted to the insurer are not taxable (MGUs should avoid labeling such fees as *carrier fees* and should instead characterize them as broker or producer fees to avoid unnecessary delays during the filing and review process).

ELANY discourages the practice of setting forth excess line premium taxes and stamping fees on binders and declaration pages as this may wrongfully imply that the insured has the legal obligation to pay the tax and stamping fee. However, subject to the following, ELANY will not suspend transactions where binders and declaration pages expressly set forth excess line premium taxes and/or stamping fees:

- There must always be a Total Cost Form signed by the insured consenting to pay taxes and stamping fees
- The binder or declarations page must be accurate and unambiguous. Incorrect calculations, for example a Total Taxable Charges line that inaccurately totals all fees, taxes and premiums will be suspended by ELANY.

Policy and Inspection Fees

A *policy fee* is an amount that is added to the basic premium by the insurer to reflect the cost of underwriting and other related expenses. Because policy fees are charged by the insurer, they are taxable and subject to stamping fees. **Fees paid to and retained by brokers should not be labeled *policy fees*.**

Inspection fees may be subject to premium tax and stamping fees depending on who performs the inspection and to whom the insured pays the inspection fee:

1. If the inspection is conducted by the excess line insurer itself or on behalf of the insurer by an inspector designated by the insurer, and the insured pays a fee directly to the insurer or the insurer's designated inspector for that inspection, then that fee is considered part of the premium even if the fee is a separate charge from the premium. In these circumstances, the fee is subject to the excess line premium tax and the stamping fee.
2. If an inspection fee is imposed in any manner other than as described above, it is neither taxable nor subject to stamping fees.



Inspection fees, whether insurer or broker imposed, must be reflected in the Total Cost Form signed by the insured.

All fees charged by or remitted to insurers should be reported as endorsement transactions to ELANY. They should not be combined into one sum on a Part A affidavit or Batch Filing Report. These fees should be set forth on binders, confirmations of coverage, declarations pages and cover notes where taxable charges are listed. When making an initial or first submission of a binder, confirmation of coverage, declarations page or cover note containing an insurer fee, submit the document with affidavits showing the stated premium on one line in the Batch Filing Report, and submit the insurer fee referencing the same document on the very next line of the Batch Filing Report as an endorsement.

Installment and Reinstatement Fees

Both installment payment fees and policy reinstatement fees are considered part of the premium and are subject to the excess line premium tax and stamping fee.

Broker Service Fees

Broker service fees are not subject to either the excess line premium tax or stamping fee since they are not included in premium and are not received as consideration or compensation by the insurer for an insurance contract.

Note that the Department of Financial Services has opined that any broker service fees charged to the insured should be reasonable in relation to the services rendered, and different insureds should not be charged different amounts for the same services. An insurance broker may charge a service fee that is a percentage of the premium, provided the Total Cost Form clearly explains whether changes in coverage, cancellation of the policy, audits, or other factors will result in changes in the fee. An insurance broker that charges an unreasonable fee in relation to the services the broker provides may be considered to have acted in an untrustworthy manner and their license may be revoked by the DFS.

Other Fees

Other fees such as audit fees, loss control fees, and processing fees should be characterized and reported according to who is charging the fee. If the insurer is charging the fee, or if the fee is being remitted to the insurer, then the fee is taxable. If the broker is charging and retaining the fee, it is not taxable.

If you have any questions, please email ElanyInfo@elany.org. Please ensure the domain elany.org is not blocked by your spam filter.