

New York Insurance Regulation 194

Insurance Brokers Will Have to Disclose Compensation Information to their Clients

By John W. Fried, Esq.

Effective on January 1, 2011, New York Insurance Regulation 194 will require insurance producers to disclose certain information concerning the compensation they receive for placing business.

Regulation 194 applies to an insurance producer's sale of insurance. An "insurance producer" includes insurance agents, insurance brokers, reinsurance intermediaries, excess lines brokers or any other person required to be licensed under New York law to sell, solicit or negotiate insurance.

With a few exceptions, an insurance producer must disclose to the purchaser of an insurance policy or contract, at or prior to the time of the insurance application, the following information:

- (1) the insurance producer's role in the sale;
- (2) whether the insurance producer will receive compensation from the selling insurer or other third party based in whole or in part on the insurance policy or contract being sold;
- (3) that the insurance broker's compensation may vary, depending upon a number of factors, including the insurance policy or contract and the insurer the purchaser selects, the volume of business the producer provides to the insurer or the profitability of the insurance policies or contracts that the producer provides to the insurer, and
- (4) that, upon request, the purchaser may obtain from the producer information about the compensation expected to be received, based in whole or in part, on the sale and the compensation expected to be received, based in whole or in part, on any alternate quotes presented by the producer.

If the purchaser requests more information about the producer's compensation before the issuance of the insurance policy or contract, the producer must disclose, among other things,

- (A) specific descriptions of the nature, amount and source of the compensation received in whole or in part on the sale, and
- (B) a description of any alternate quotes presented by the producer including coverage, premium and compensation that the insurance producer would have received based, in whole or in part, on the sale of any such alternate coverage if the purchaser had purchased the alternate coverage, and

(C) a statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale.

The term “compensation” includes anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, trips, prizes or gifts whether paid as commission or otherwise.

Either the insurance producer or the insurer, pursuant to a written agreement, must retain records concerning these disclosures for three years from the time of the disclosure.

For questions, further information or consultation, please contact John W. Fried in our New York office at (212) 268-7111 or at johnwfried@fried-epstein.com.

[Editor's Note: John W. Fried is a Partner at the New York office of Fried & Epstein LLP, which regularly represents policyholders in insurance coverage disputes. He is a frequent speaker and author on the subject of insurance coverage law and practice. Information concerning Fried & Epstein's Insurance Coverage Practice Group may be obtained by visiting the firm's website at www.fried-epstein.com. Responses to this article are welcome. Copyright 2010 John W. Fried.]