



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
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NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Gregory V. Serio
Superintendent

The Office of General Counsel issued the following opinion on August 27, 2004, representing the position of the New York State Insurance Department.

Re: Automobile Insurance Policy – Named Insureds

Question Presented:

May two people who reside in the same household but are not husband and wife be "Named Insureds" on an automobile insurance policy?

Conclusion:

Yes, provided that they both have an insurable interest in the automobile being insured.

Facts:

No facts were presented. The inquiry was general in nature.

Analysis:

As was discussed in Office of General Counsel Opinions 11-2-95 and 12-15-95, copies of which are attached, it is the existence of an insurable interest in property which is determinative of whether an individual can be a named insured under an insurance policy. N.Y. Ins. Law § 3401 (McKinney 2000) provides:

No contract or policy of insurance on property made or issued in this state, or made or issued upon any property in this state, shall be enforceable except for the benefit of some person having an insurable interest in the property insured. In this article, "insurable interest" shall include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

Accordingly, it is not the nature of the living arrangement, which is determinative of whether an insurer can

issue a policy in joint names, but rather whether both parties have an insurable interest in the property. Generally, a person has an insurable interest in property if he or she will derive pecuniary benefit or advantage from its preservation or will suffer pecuniary loss or damage from its destruction, termination or injury by the happening of the event insured against. See Scarola v. Insurance Co. of North America, 31 N.Y.2d 411, 340 N.Y.S.2d 630 (1972).

Nonetheless, an insurer may issue a different policy form to a married couple than it issues to an unmarried couple, provided that the insurer does not discriminate in the availability of "coverage" due to a person's sex or marital status. Thus, an insurer must make available to individuals who are not married to each other the same coverage, including options, limits, benefits, etc., as is available to individuals who are married to each other, although the specific forms may differ.

For further information you may contact Supervising Attorney Joan Siegel at the New York City Office.