



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Gregory V. Serio
Superintendent

The Office of General Counsel issued the following opinion on October 25, 2004 representing the position of the New York State Insurance Department.

Re: Fraud Warning

Questions Presented

1. Is there any alternative to providing the fraud warning statement required by 11 NYCRR § 86.6 (2002) (Regulation 95) when the application procedure does not use a traditional insurance application?
2. May either the insurance broker or the insurance company provide the prospective insured with the fraud warning statement required pursuant to 11 NYCRR § 86.6 (2002) (Regulation 95) prior to, or after insurance coverage is bound?

Conclusions

1. No, 11 NYCRR § 86.6 (2002) (Regulation 95) requires a fraud warning statement that conforms to 11 NYCRR § Part 86.6 (2002) (Regulation 95) be presented to the prospective insured during the application process.
2. Pursuant to 11 NYCRR § 86.6 (2002) (Regulation 95) either the insurance broker or the insurance company must provide the prospective insured with a fraud warning statement that conforms to 11 NYCRR § 86.6 (2002) (Regulation 95) during the application process.

Facts

The inquirer described a situation where an insurance broker works on large commercial insurance accounts where the insurance broker obtains from prospective insureds information for the application, but there is no physical application provided to the prospective insured. The inquirer wants to know whether a fraud warning statement is required in this situation, and if it is, whether the insurance broker or the insurance company has a duty to provide it prior to, or after, insurance coverage is bound.

Analysis

11 NYCRR § 86.4 (2003) (Regulation 95) states in relevant part:

(a) . . . all applications for commercial insurance . . .
. . . provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

. . . .

(d) *Location of warning statements and type size.*

The warning statements required by subdivisions (a) . . . of this section shall be placed immediately above the space provided for the signature of the person executing the application . . .

(e) Notwithstanding the provisions of subdivisions

(a) . . . of this section, insurers may use

substantially similar warning statements provided
such warning statements are submitted to the
Insurance Frauds Bureau for prior approval.

Pursuant to 11 NYCRR § 86.4 (2003) (Regulation 95) the insurance company, or the insurance broker or insurance agent for the insurance company, must provide a fraud warning statement on the application above the insured's signature line. The fraud warning must be provided to the prospective insured no later than just prior to the insured signing the insurance contract.

For further information one may contact Senior Attorney Susan Dess at the New York City Office.