

200 Licensing

204 Mandatory Disclosure of Certain Information by Persons Receiving the Name of a Borrower from a Delaware Bank or Trust Company Engaging in the Business of Insurance [Formerly Regulation 66, Part 2]

1.0 Generally

- 1.1 All information required to be disclosed by this regulation shall be set out conspicuously and under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of other information so as to be confusing or misleading.

2.0 Specific Disclosures Required

2.1 Prohibitions on "tying"

- 2.1.1 Any person engaging in the business of insurance in Delaware who has received the name of any actual or potential borrower from any bank or trust company directly or indirectly engaging in any activity authorized by 5 **Del.C.** §761(1)(14) in Delaware shall make the following written disclosure (or a substantially equivalent written disclosure) simultaneously with every application for any product or service to be purchased or obtained in Delaware by such actual or potential borrower from such person:

2.1.1.1 'Prohibition on Tying'

2.1.2 What We Cannot Do

- 2.1.2.1 The insurance laws of this state provide that a lender may not require, directly or indirectly, the borrower to acquire insurance through any particular insurance agent or company.
- 2.1.2.2 The borrower, subject to the rules adopted by the Insurance Commissioner, has the right to have the insurance placed with an insurance agent or company of his choice. The lender, however, has the right to prescribe reasonable requirements regarding the financial structure and stability of the company, and the adequacy of coverage.
- 2.1.2.3 You have applied today to [insert name of entity to whom application submitted] for [describe product or service applied for]. We CANNOT condition our approval (if any) of your application upon:
- 2.1.2.3.1 Your agreement to obtain additional credits, products or services from us or from any company or person affiliated with us;
 - 2.1.2.3.2 Your agreement to provide additional credits, products or services to us or to any company or person affiliated with us; or
 - 2.1.2.3.3 Your agreement not to obtain credits, products or services from any person or company that competes with us or with any company or person affiliated with us."

- 2.2 Any person engaging in the business of insurance in Delaware who has received the name of any actual or potential borrower from a bank or trust company first authorized to transact the business of insurance in Delaware pursuant to 5 **Del.C.** §761(a)(14) shall make the following written disclosure (or a substantially equivalent written disclosure), immediately following that disclosure required by section 2.1.1 of this regulation, in every application for any insurance policy to be purchased or obtained in Delaware from such person by such actual or potential borrower:

- 2.2.1 "We have received your name from [insert name of bank or trust company]. If you have previously applied for a loan, credit, product or other service from [insert name of bank or trust company], and that application is still pending today, we cannot, until [insert bank or trust company] approves your pending application, accept an application from you for any insurance policy which directly relates to that applied-for loan, credit product or other service."

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2.2.2 Notwithstanding the above, however, the Delaware Unfair Practices Act under certain circumstances prohibits use or disclosure of information resulting from any requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan (18 Del.C. Sec. 2305).

3.0 Cancellation rights

3.1 Any person engaging in the business of insurance in Delaware who has received the name of an actual or potential "individual borrower" (as defined in 5 Del.C. §930(f)) from a bank or trust company first authorized to transact the business of insurance in Delaware pursuant to 5 Del.C. §761(a)(14) must deliver copies of the following written notice form to any such individual borrower who has purchased insurance in Delaware from such person under circumstances where the procurement of such insurance (whether from the person selling such insurance or from any other source) is lawfully made an express condition of any extension of credit to the individual borrower by the bank or trust company from whom the individual borrower's name was obtained. Such notice form shall be delivered to the individual borrower not later than the latter of the time the policy of insurance is delivered or the time he or she enters into an agreement for the purchase of insurance.

3.2 "Notice of Insurance Cancellation Rights"

3.2.1 You have purchased insurance from us for a total premium of per (mo/yr).

3.2.2 You may cancel the insurance you have purchased from us at any time until midnight of the 30th day following our delivery of this notice and the accompanying cancellation form to you (the "Cancellation Period"). If you exercise your right to cancel the insurance within the Cancellation Period, you are entitled to a refund of some or all of the premium you have paid for such insurance, as follows:

3.2.2.1 If, within the first ten (10) days of the Cancellation Period, you exercise your right to cancel the insurance, we will unconditionally refund all of the premium you have paid. IF YOU EXERCISE YOUR RIGHT TO CANCEL THE INSURANCE AND OBTAIN A REFUND OF ALL YOUR PREMIUM, WE WILL BE RELEASED FROM ALL LIABILITY WHICH WOULD OTHERWISE BE COVERED BY THAT INSURANCE.

3.2.2.2 If, at any time after the 10th day of the Cancellation Period and before the end of the Cancellation Period, you exercise your right to cancel the insurance you have purchased from us, we will, at your option:

3.2.2.2.1 refund the unearned portion of the premium you have paid (as computed in accordance with applicable law); or

3.2.2.2.2 issue you a credit for the unearned portion of the premium you have paid and, where we have financed the premium over time, with interest, issue you a credit for the unearned portion of the finance charge attributable to the insurance (as computed in accordance with your contract documents).

3.2.2.2.3 All refunds under this Paragraph 3.2.2 will be calculated as of the date of your cancellation of the insurance you have purchased from us. As set forth in Paragraph 3.2.3 of this notice, the date of your cancellation of this insurance depends upon the method you use to send the accompanying cancellation form to us.

3.2.3 You must exercise your right to cancel the insurance you have purchased from us by delivering the accompanying cancellation form to us (or our assignee) within the Cancellation Period. If you send the accompanying form to us by first-class mail, postage prepaid, at the address shown on such form, the form will be considered to have been delivered to us (and your insurance will be considered to have been cancelled) when you mailed it. The postmark on the envelope in which the cancellation form is mailed to us will be conclusive evidence of the date on which you mailed it. IF THE CANCELLATION FORM IS SENT TO US BY ANY OTHER MEANS, IT WILL BE CONSIDERED TO HAVE BEEN DELIVERED WHEN ACTUALLY RECEIVED BY US, AND YOUR INSURANCE WILL BE CONSIDERED TO HAVE BEEN CANCELLED AT THAT TIME.

- 3.2.4 You have the right to choose the person or company through which you wish to obtain the insurance you have purchased from us. In other words, you do not have to purchase this insurance from us. During the Cancellation Period, you may obtain price quotations on the insurance you have purchased from us from other sources.
- 3.2.5 If the insurance you have purchased from us is against loss of, damage to, or liability arising out of ownership or use of, property which you have pledged or otherwise used to secure an extension of credit from a bank or trust company or any of its affiliates, and that extension of credit was conditioned on your purchase of such insurance, that bank or trust company may refuse to allow you to cancel such insurance as provided in this notice unless, at the same time you deliver the accompanying cancellation form to us, you deliver evidence to the bank or trust company that you have obtained other adequate insurance against such risks. The bank or trust company may refuse to accept the insurance obtained by you, based upon the financial condition of the insurer or adequacy of the coverage provided.
- 3.2.6 Except as set forth in Paragraph 3.2.2 of this notice, you will not be subject to any fee, cancellation charge or penalty payment if you exercise your right to cancel the insurance you have purchased from us as specified herein.
- 3.2.7 You may have rights in addition to those described above under the terms of your insurance policy or applicable state law."
- 3.2.8 The foregoing notice form must be delivered to an "individual borrower" only upon his initial purchase of insurance, and not upon his subsequent renewal of that insurance.
- 3.3 Contemporaneously with the delivery of the notice form described in section 3.1 of this regulation, a person engaging in the business of insurance described in such Paragraph shall deliver the following written cancellation form to any "individual borrower" (as defined in 5 **Del.C.** §930(f)) who has purchased insurance in Delaware from such person under circumstances where the procurement of such insurance (whether from the person selling such insurance or from any other source) is lawfully made an express condition of any extension of credit to the individual borrower by the bank and trust company from whom the individual borrower's name was obtained:
- 3.4 "Cancelation Notice"
- 3.4.1 The undersigned, pursuant to the provisions of 5 **Del.C.** Sec. 930, hereby cancels the purchase of insurance obtained from [insert name of selling person], and requests a refund or credit of the premium paid for such insurance, as follows (check only one of the following three alternatives):
- 3.4.1.1 _____ Unconditional Refund of Premium. YOU ARE ONLY ENTITLED TO SUCH A PREMIUM REFUND IF THIS CANCELLATION FORM IS DELIVERED TO [insert name of selling person] WITHIN THE FIRST TEN (10) DAYS OF THE CANCELLATION PERIOD (see Paragraph 3.2.2.1 of the "Notice of Insurance Cancellation Rights" provided to you with this Cancellation Form).
- 3.4.1.2 _____ Refund of Unearned Portion of Premium (see Paragraph 5(b)(i) of the "Notice of Insurance Cancellation Rights" provided to you with this Cancellation Form).
- 3.4.1.3 _____ Credit of Unearned Portions of Premium and Applicable Finance Charges (see Paragraph 3.2.5 of the "Notice of Insurance Cancellation Rights" provided to you with this Cancellation Form).
- 3.4.2 If the insurance I am canceling is against loss of, damage to, or liability arising out of the ownership or use of, property which I pledged or otherwise used to secure an extension of credit from [insert name of bank or trust company], I have enclosed with this Cancellation Form a certificate of insurance showing that I have obtained other adequate insurance against such risks, and I understand that [insert name of bank or trust company] has no obligation to honor this Cancellation Form if I have not enclosed such a certificate of insurance.

Purchaser Signature

Date of Signature

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3.4.3 IMPORTANT NOTICE: THIS CANCELLATION FORM IS EFFECTIVE WHEN DELIVERED TO [insert name of selling person] AT THE FOLLOWING ADDRESS:

[insert address]

3.4.4 IF THIS CANCELLATION FORM IS SENT BY FIRST-CLASS MAIL, POSTAGE PREPAID, IT WILL BE DEEMED TO HAVE BEEN DELIVERED WHEN MAILED. THE POSTMARK ON THE ENVELOPE IN WHICH THIS FORM IS MAILED WILL BE CONCLUSIVE EVIDENCE OF THE DATE ON WHICH YOU MAILED IT. IF THE CANCELLATION FORM IS SENT BY ANY OTHER MEANS, IT WILL BE DEEMED TO HAVE BEEN DELIVERED WHEN RECEIVED BY [insert name of selling person]."

3.4.5 the foregoing cancellation form must be delivered to an "individual borrower" only upon his initial purchase of insurance, and not upon his subsequent renewal of that insurance. Such cancellation form may be appended to, incorporated in, or otherwise made a part of the notice form described in section 3.1 of this regulation.

4.0 Separation of bank or trust company and its insurance operation

4.1 Where a person issuing policies of insurance has obtained the name of an actual or potential borrower from a bank or trust company engaging in any activity authorized by 5 **Del.C.** §761(a)(14), and such borrower applies to such person for insurance, such person shall make the following disclosure at the time of such borrower's application or as soon thereafter as possible:

4.2 "Your Right to Look to a Delaware Bank or Trust Company for Payment on Any Insurance Policy is Limited By Law" .

4.2.1 Delaware banks and trust companies are NOT liable for any insurance policies issued by their subsidiaries or divisions."

5.0 Effective Date

5.1 This regulation shall become effective 20 days after signature by the Commissioner.

5.2 The Bank and Trust Company Insurance Act of 1989 requires persons receiving the name of any actual or potential borrower from a Delaware bank or trust company engaging in the business of insurance pursuant to 5 **Del.C.** Sec. 761(a)(14) to disclose certain information to that borrower. This regulation, promulgated after consultation with the State Bank Commissioner, governs the disclosure of such information by that person to the borrower.