



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

**ADVISORY OPINION
2013-01**

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the “Department”) on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL INSURERS AND PRODUCERS TRANSACTING INSURANCE
BUSINESS IN THE COMMONWEALTH OF KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER

RE: ELECTRONIC DELIVERY OF NOTIFICATIONS

DATE: FEBRUARY 19, 2013

* * * * *

The Department has received recent inquiries from insurers as to whether electronic mail messages would be considered compliant with statutorily required notification to policyholders who have requested to have their policy and other communications sent electronically. The purpose of Advisory Opinion is to provide the Department’s interpretation on whether electronic mail messages would provide effective notice under Kentucky Revised Statutes Chapter 304 (the Kentucky Insurance Code).

First, we note that KRS 304.14-230 and 304.14-240 provide for electronic delivery of a policy or renewal policy/certificate by agreement between the insurer and policyholder.

Insurers are directed by other statutes to notify policyholders of cancellations, renewals, nonrenewals, and premium increases. For example, KRS 304.20-320(b) requires such notice to be “delivered to the named insured or mailed to the named insured at the last known address of the named insured.”

After reviewing the various laws requiring notice, as well as Kentucky's Uniform Electronic Transactions Act (UETA), KRS 369.101 through 369.120, the Department interprets the required delivery of effective notice can be made by electronic mail to policyholders:

- (1) where the policyholder's electronic mail address is on file with the insurer; and
- (2) where the policyholder has previously elected to receive communications of cancellations, renewals, nonrenewals, and premium increases through electronic mail.

The delivery of cancellation, renewal, nonrenewal, and premium increase notices is of paramount importance for consumer protection. In order to ensure the protections contemplated by the statutory notice requirements are upheld, the Department will permit such notices to be delivered electronically provided the following conditions are met.

An insurer must make a disclosure to any policyholder of options to elect to receive a policy, and notices, electronically. The options, in substance, must be:

- a. To continue to receive delivery of the policy and all notices in hard copy;
- b. To receive delivery of the policy electronically, but to receive all notices in hard copy; or
- c. To receive delivery of the policy AND ALL notices electronically.

An insurer's failure to grant a request from a policyholder to receive hard copy mailings or an insurer's failure to provide the above disclosure where required could result in administrative action pursuant to the authority of KRS 304.20-040(15) and KRS 304.20-350.

These disclosures must contain the following or substantially similar language:

The policyholder who elects to allow for this policy, notices and communications to be sent to the electronic mail address provided by the policyholder should be aware that the election operates as consent by the policyholder for all notices to be sent electronically, including notice of nonrenewal and cancellation. Therefore, the policyholder should be diligent in updating the electronic mail address provided to the insurer in the event that the address should change.

An insurer making an electronic delivery or providing electronic notice shall maintain proof of electronic mailing.

If you have any questions about this Advisory Opinion, please contact the Department's Property and Casualty Division at (502) 564-3630.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 19th day of February, 2013