

[About PIA](#) • [Join PIA](#) • [Contact us](#) • [Site map](#)



[Connecticut](#) | [New Hampshire](#) | [New Jersey](#) | [New York](#) | [Vermont](#)

[Education](#) | [Events](#) | [Government, Industry Affairs](#) | [Member Resources](#) | [Products, Services](#) | [Young Professionals](#)



Welcome Keith Savino, [Log out](#)

PIA—your best source of information

Search:

Keywords:

QuickSource index This Page

[Search tips](#)
[Need Help?](#)

[Back to Index](#)
[Related documents/services](#)
[Print this page](#)
[E-mail this page](#)

Electronic delivery of executed insurance policies via the Internet

Resource kit 31254

By Matthew F. Guilbault, Esq.

In this new age of technology, agents are increasingly faced with situations in which they receive policies and related documents from carriers via electronic media and the internet. Furthermore, producers may want to transmit these documents to their policyholders using this same technology. This resource kit addresses these situations and seeks to provide guidance to producers as they navigate the requirements of electronic transmission and receipt of insurance documents.

The New York State Department of Financial Services has stated that an insurance policy which has been issued and executed on the internet is considered a properly delivered and valid insurance contract if the insured prints the policy from the internet on the insured's personal computer. In the [opinion](#) examining this issue, the NYSDFS concludes that nothing in the Insurance Law or regulations promulgated thereunder prohibits an insurance company from issuing and delivering an insurance policy to an insured via the internet if the insured has consented to receiving electronic documents. The electronic documents must, however, conform to applicable substantive and formatting requirements of the Insurance Law and any other applicable laws. **Most importantly, before an insurance company or its agent may transmit insurance policy forms to an insured electronically, it must obtain the insured's consent.**

Moreover, an insurer must obtain an **agent's consent** to engage in an electronic insurance transaction before sending insurance policies and related documents to an agent electronically. See [OGC Opinion No. 09-12-04](#). According to the 2009 opinion, the insurance agent's consent to engage in an electronic transaction with a carrier may be obtained in a number of ways. For example, the contract between the insurer and the agent may address the matter. However, if the contract does not specifically grant such consent, the course of conduct between the insurer and the independent agent may establish the agent's implicit consent to do business electronically. For example, the insurer may have been sending insurance policies electronically to the independent agent for some time without an objection being raised by the independent agent.

Relevant laws. Two laws are relevant to the inquiry. The first, Article III of the New York Technology Law (Sections 301-309), also known as the Electronic Signatures and Records Act (ESRA), establishes that electronic transactions are the legal equivalent of paper-based transactions, and sets forth a legal framework for legal electronic transactions. The second is the federal Electronic Signatures in Global and National Commerce Act ("E-Sign"), 15 U.S.C.A. Sections 7001-7031, which establishes the legal validity of electronic records and signatures. Both E-Sign and ESRA authorize the use and acceptance of electronic signatures and electronic records in commercial transactions and confirm their legal validity. However, neither ESRA nor E-Sign obligates any person to accept the use of electronic records and signatures.

Therefore, the Insurance Law does not prohibit an insurance company or an insurance agent from electronically transmitting an insurance policy to insureds, provided that the policy otherwise conforms to the Insurance Law and any other applicable laws. The NYSDFS's Office of General Counsel (OGC) has opined that the term “electronic record,” as defined in the New York Technology Law Section 302(2), includes insurance policy forms and certificates, and that pursuant to New York Technology Law Section 305(3), electronic records “shall have the same force and effect as those records not produced by electronic means.” See OGC Opinion No. 05-11-23. Further supporting the legal effect of electronically transmitted records is Section 7001(a)(2) of E-Sign, which provides that an electronic record may not be denied legal effect just because of its electronic form. See OGC Opinion No. 05-11-23. In that opinion, OGC opined that statutes that provide for “delivery” permit electronic communications pursuant to the authority established under ESRA and the federal E-Sign law. *Id.*; see also Circular Letter No. 33 (1999) (stating that electronic communications are permitted where statutes provide for “delivery”); Supp. No. 1 to Circular Letter No. 33 dated Sept. 3, 2002.

Consent required. Both ESRA and the federal E-Sign law have a section that preserves the consumer's right not to consent to receive electronic documents.¹

Before an insurance company or its agent may transmit insurance policy forms to an insured electronically, it must obtain the insured's consent. If the insured declines to consent to receiving documents electronically, the insurance company or its agent must print a hard-copy document for delivery to that insured. See OGC Opinion No. 05-11-23.

With respect to obtaining the consent of a consumer, 15 U.S.C.A. Section 7001(c) provides guidance as to the required components of consent. These include that:

- the consumer affirmatively consents to such use (and has not withdrawn their consent);
- the consumer, prior to consenting, is provided with a clear and conspicuous statement informing the consumer of any right or option to have the record made available in nonelectronic form;
- the right of the consumer to withdraw the consent; and
- of any conditions, consequences or fees in the event of such withdrawal.

Electronic consent. The intended recipient must affirmatively consent to receive the documents electronically in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used and has provided an address for the receipt of such information. Typically this means that the consent form also is transmitted and executed electronically.

Clear and conspicuous statement prior to consent. Prior to consenting, the intended recipient must be provided a clear and conspicuous statement indicating:

- the types of documents to which the consent applies;
- that consent can be withdrawn at any time without charge;
- the procedures for withdrawing consent and for updating the address for receipt of electronic documents;
- the right to a paper version of an electronically furnished document, and whether there will be a charge for the paper version; and
- any hardware and software requirements for accessing and retaining the documents.

When changes in hardware or software are required. After consenting, if a change in the hardware or software needed to access or retain electronic documents creates a material risk that the individual will be unable to access or retain electronically furnished documents, the intended recipient must be provided with a statement of the revised hardware or software requirements and given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of consent. The recipient must again consent to the receipt of documents through electronic media.

System requirements. A party making electronic disclosures also must take appropriate and necessary measures reasonably calculated to ensure that the system:

- results in actual receipt of the documents (for example, by using return receipt or notice of undelivered email features or conducting periodic reviews or surveys to confirm receipt); and
- protects the confidentiality of personal information relating to accounts and benefits.

Style, format and content of documents disclosed electronically. Documents that are disclosed electronically must be consistent with the style, format and content requirements that otherwise apply to the particular document. For instance, the electronic version of an insurance policy must be a verbatim copy of the original hard-copy document that the insurer files with the NYSDFS, and the electronic version of an insurance policy must conform to all other applicable statutory requirements. See [OGC Opinion No. 00-02-10](#) (stating that electronically transmitted insurance forms must be formatted in a manner that ensures that those viewing it online and printing it, receive a document that contains the same substance, in the same format, as the original nonelectronic document that was filed with the NYSDFS).

Notice requirements. When a document is furnished electronically, the intended recipient also must be notified of the significance of the document, if its significance is not otherwise evident. In addition, the intended recipient must be notified of the right to request a paper version of the document.

Charges for paper copies of documents furnished electronically. The party utilizing electronic transmission of documents may not impose a fee for a paper copy of a document that is furnished electronically if the sender is otherwise required to furnish the document without charge. However, if the sender is otherwise permitted to charge a fee for a document and the document is available electronically but a paper copy is requested, a fee may be imposed.

Email vs. the internet. Whether the insurer is transmitting the insurance policies to its insureds via email or making the policies available as electronic documents through an online portal does not change the analysis. The insurer still must obtain the consent of each insured before it can place the insured's insurance policies online.

Notices of cancellation. Furthermore, and as a general matter, an insurer also may send an electronic notice of cancellation to an insured by means of email if the insured has consented to receiving electronic documents. Remember that pursuant to New York Technology Law Section 305(3), electronic records are given the same force and effect as records not produced by electronic means.

The NYSDFS previously has construed laws that require notice, but do not specify the means by which notice is to be given, as allowing for electronic transmission. (However, the use of electronic means to send a required notice is not permitted where the applicable statute specifically calls for the use of nonelectronic means of giving notice.²) In Circular Letter No. 33 (1999), the NYSDFS stated that “statutes that utilize the words 'writing,' 'certificate' or 'memorandum'; or the like, permit electronic documents” and, that “statutes that provide for 'delivery,' 'notice' or the like, permit electronic communications.” Likewise, in [OGC Opinion No. 04-03-24](#), the NYSDFS opined that an insurance company may provide statutorily required “written notice” electronically, and, in [OGC Opinion No. 04-05-03](#), the NYSDFS opined that an insurance company may notify customers of termination of their coverage by means of email where the statute requires “delivering or mailing” notice.

An electronic record that the notice of cancellation was sent to the insured at an email address for the insured on record with the insurer will suffice as proof that the notice has in fact been sent.³ The electronic record of the transmission, however, must be reliable, accurate and verifiable. See [OGC Opinion No. 99-04-22](#))

Applicability to agents/brokers. Under New York Technology Law Section 309, ESRA does not require any entity or person to use an electronic record or electronic signature. Accordingly, if any one party to the

transaction does not wish, or is not able, to participate fully in an electronic transaction, the party cannot be required to do so. See Circular Letter No. 33 (1999). Therefore, carriers utilizing electronic transmission of documents to agents and brokers also must comply with the requirements of consent. See [OGC Opinion No. 09-12-04](#).

As stated earlier, however, an insurance agent's consent to engage in an electronic transaction with a carrier may be obtained in a number of ways, including through the course of conduct between the insurer and the independent agent where the insurer has been sending insurance policies electronically to the independent agent for some time without an objection being raised by the independent agent.

Conclusion. Insurance companies and their agents may make available electronic versions of insurance policies on the internet for insureds to print on personal computers.⁴ Such insurance policies will be considered as properly delivered if the insured has consented to receipt of electronic documents. The electronic policies must, however, conform to applicable substantive and formatting requirements of the Insurance Law, and any other applicable laws.

SAMPLE NOTICE

Consent to receive electronic records (pursuant to 15 USCA Section 7001(c))

Please read this information carefully and print a copy and/or retain this information electronically for future reference.

Introduction. From time to time this agency may utilize the internet, email, digital media or the like to transmit policy documents and related information to policyholders. This consent to receive electronic records informs you of your rights when conducting these transactions electronically with this agency and those third parties to which we may forward your requests, information or applications. By consenting below, you acknowledge receipt of this consent to receive electronic records and agree to the electronic delivery of any disclosures, policy forms and documents, information or notices required by federal law including any adverse action notices or privacy policy notices (hereinafter "records") at our website or through the electronic mail address you provide.

Hardware and software requirements. Before agreeing to receive records electronically, you must determine if you have the necessary hardware and software to access and retain these records electronically. To access your records, you will need an electronic mailing address, Adobe Acrobat Reader and a personal computer or other access device that is capable of accessing the internet. To retain your records, your access device must have the ability to download to your hard drive or any external media storage, or print the records as well as embedded HTML files.

If a change in the hardware or software requirements needed to access or retain these electronic records creates a material risk that you will not be able to access or retain a subsequent electronic record that was the subject of this consent, upon request, we will provide you with a statement of the revised hardware and software requirements for access to and retention of the electronic records, and the right to withdraw your consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under this agreement.

Right to withdraw consent and procedures for withdrawal. You may withdraw your consent to receive your records electronically at any time by sending an email to the following address _____ . With the exception of email communications, your transaction will continue to be processed in nonelectronic form at no charge. Withdrawal of your consent shall not affect the legal effectiveness, validity or enforceability of electronic records provided or made available to you prior to

implementation of your withdrawal of consent. Your withdrawal of consent shall be effective within 30 days after receipt of the withdrawal request by us.

Consent applies to categories of records. Your consent to electronic records applies to all policy documents, applications or any information related to your policy. You will receive any records required by federal law at this website or through the electronic mail address you provide.

Option to obtain paper copies of records. You have the option to request that we provide you with paper copies of those records we provide to you electronically at this website or through the electronic mail address you provide. If you wish to obtain the records in nonelectronic form, send your request via email to _____ and provide your mailing address. We will not charge you for the paper copies of the records.

Updating your contact information. To update your electronic or mailing address, contact us via email at _____.

CONSENT AND ACKNOWLEDGMENT. BY FURNISHING YOUR EMAIL ADDRESS AND CLICKING “I AGREE” BELOW, YOU ACKNOWLEDGE THAT YOU CAN ACCESS AND RETAIN THE ELECTRONIC RECORDS IN THE FORMAT DESCRIBED ABOVE, AND YOU CONSENT TO HAVING US PROVIDE DOCUMENTS TO YOU ELECTRONICALLY VIA EMAIL OR OTHER ELECTRONIC MEDIA.

EMAIL ADDRESS: _____

Additional resources available

The circular letters below were put out by the NYSDFS addressing the issue of solicitations on the internet, as well as the use of electronic signatures.

[Circular Letter No. 33 \(1999\)](#)

[Circular Letter No. 31 \(1998\)](#)

[Supplement No. 1 to Circular Letter No. 31 \(1998\)](#)

¹New York Technology Law Section 309 states that “nothing in this article shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law.” Similarly, Section 7001(b)(2) of E-Sign states that this subchapter does not “require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.”

²In Circular Letter No. 33, the NYSDFS advised that “there are certain statutes that contain additional requirements that, without amendment or further regulatory interpretation, may present obstacles to electronic commerce, e.g., the use of ... United States mail, and statutory cancellation notice requirements.” For example, New York Vehicle & Traffic Law Section 313(1)(a) provides that, as to the cancellation of an owner's policy of liability insurance, a “notice of termination [should be sent] by regular mail, with a certificate of mailing, properly endorsed by the postal service.... ” However, New York Insurance Law Section 3442(n)(2)(A) (McKinney 2007, Supp. 2009), in contrast, provides that a notice of cancellation of an account group policies shall not become effective until 15 days after the insurer mails or delivers written notice of cancellation to the group policyholder at the mailing address shown in the policy, and New York Insurance Law Section 3425(h)(1) provides that “[p]roof of mailing of a notice of cancellation ... to the named insured at the address shown in the policy, shall be sufficient proof of the giving of notice.... ” Each of those statutes is silent as to the method of transmission. Consequently, so long as the policy contains the insured's email address, the required notice in both New York Insurance Law Sections 3442(n)(2)(A) and 3425(h)(1) may be satisfied by sending the notice of cancellation electronically.

³As to what constitutes proof of mailing or delivery of a policy cancellation notice that is sent electronically, the federal Electronic Signatures in Global and National Commerce Act (“E-Sign”), 15 U.S.C.A. Section 7001(d)(1), addresses the retention of records. That statute provides in pertinent part as follows:

(1) Accuracy and accessibility.

If a statute, regulation or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate ... commerce be retained, that requirement is met by retaining an electronic record of the information in the ... record that—

(A) accurately reflects the information set forth in the ... record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation or rule of law, for the period required by such statute, regulation or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing or otherwise.

⁴And other documents provided the applicable statute specifically calls for the use of nonelectronic means of giving notice. 7/17

Think PIA first

Other Related QuickSource Documents

No related resource kits have been assigned to this particular document. If you would like any additional information on this topic, please feel free to send an e-mail to PIA's [Industry Resource Center](#) with your specific inquiry.

Other Related Products/Services

No related products or services have been assigned to this particular document. If you would like any additional information on this topic, please feel free to send an e-mail to PIA's [Industry Resource Center](#) with your specific inquiry.

© 2013 by Professional Insurance Agents. All rights reserved. [Disclaimer and legal notice](#)