



BULLETIN

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DATE: July 25, 2022
TO: All Surplus Lines Agencies
FROM: Marie E. Rudert, Executive Director
SUBJECT: Producer Fees

We have received several inquiries related to the permissibility of a surplus lines producer charging a fee, in addition to a commission, in connection with the sale, solicitation, or negotiation of a contract of surplus lines insurance for non-commercial (personal lines) business.

Pennsylvania Insurance Law § 310.74(a) provides, in relevant part:

A licensee may charge a fee in addition to a commission to a person for the sale, solicitation or negotiation of a contract of insurance for commercial business. The fee charged by the licensee shall be disclosed in advance in writing to the person and shall be reasonable in relationship to the services provided.

A “licensee” includes a Pennsylvania surplus lines producer. By its terms, section 310.74(a) only permits a licensee (including a surplus lines producer) to charge a fee, in addition to a commission, in connection with the sale, solicitation, or negotiation of a contract of insurance for commercial business. In addition, this fee must be properly disclosed in advance and in writing. In 2020, the Pennsylvania Supreme Court held that § 310.74 implicitly **prohibits** additional fees in connection with the sale, solicitation, or negotiation of any non-commercial insurance. (*Woodford v. Ins. Dept.*, 243 A.3d 60 (Pa. 2020)). Whether a particular surplus lines policy would qualify as a commercial policy depends on the facts of the specific transaction.

For these reasons, the Department would likely consider additional fees charged on a non-commercial surplus lines policy a violation of § 310.74(a) if the surplus lines producer is also receiving commissions from the insurer. Pursuant to 40 P.S. § 310.91, a violation of 40 P.S. § 310.74 is punishable by (i) suspension or revocation of a license; (ii) a civil penalty of up to \$5,000.00 per violation; (iii) an order to cease and desist; and (iv) any other conditions as the commissioner deems appropriate.

Please see the following links to [Section 310.74\(a\)](#) and [Woodford v. Insurance Department](#) for further information.

MER/ds