

ELECTRONIC DELIVERY OF INSURANCE POLICIES

by
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With the increasing use of the Internet to conduct business and the desire of many businesses to go “paperless” for economic, ecological, and other reasons, the question has arisen regarding the ability of an insurance company or agent to satisfy the requirements of O.C.G.A. Section 33-24-14 by electronic means. That statute requires every insurance policy to “be mailed or delivered to the insured or to the person entitled to the policy within a reasonable period of time after its issuance.” The failure to do so can have significant consequences for the insurance company and its agent, if the agent assumed the duty of delivering the insurance policy to the insured.

Whether the requirements of the above statute can be met by the electronic delivery of a copy of the insurance policy is governed by two statutes, the Electronic Signatures in Global and National Commerce Act passed by Congress in 2000 (the “Federal Act”) and the Uniform Electronic Transactions Act passed by the Georgia General Assembly in 2009 (the “State Act”). The Federal Act validates all e-commerce, or Internet based, transactions that satisfy its requirements, regardless of the existence of any inconsistent state law that may require a particular transaction to be evidenced by a written document or a manual signature. The Federal Act also overrides any state law that requires the keeping of a paper copy of any such contract or other transaction related record, if its requirements are satisfied. The State Act “modifies, limits, and supersedes” the Federal Act with two specific exceptions. Those exceptions concern electronic transactions that involve consumers (i.e., individuals obtaining products or services to be used primarily for personal, family, or household purposes) and the delivery of certain types of notices that are not relevant to the subject of this article.

The Federal and State Acts only validate electronic transactions (which include the delivery of documents) between parties that have consented to conduct the transaction by electronic means. Thus, if an insured has not consented to the delivery of an insurance policy by electronic means, such a delivery of the policy will not satisfy the requirements of O.C.G.A. Section 33-24-14. The State Act also contains language that states if another statute requires the delivery of a document “by a specified method”, such a document must be delivered by the method specified, with one exception. That exception concerns the delivery of a document by “first-class mail, postage prepaid, or by regular United States mail.” Where those two methods of delivery are specifically required by another statute, electronic delivery of the document in question is possible by mutual agreement of the parties involved if the other statute permits the parties to agree to a different method of delivery.

Since O.C.G.A. Section 33-24-14 was passed at a time (1960) when the only methods of delivering a document were the United States mail and personal delivery, it does not address whether the parties involved may agree to another method of delivery of an insurance policy. However, given the stated purposes of the Federal and State Acts to facilitate the use of electronic transactions in commerce, a good argument can be made that, in the absence of a specific prohibition on varying the “specified method” of delivery of a particular document, the parties to a transaction are free to do so. Another good argument can be made that the use of the word “deliver” in the above statute as an alternative to “mail” would encompass the electronic delivery of an insurance policy where such a method of delivery was otherwise approved by law. A preliminary answer to this question could come in the form of a regulation promulgated by the Insurance Commissioner, with the final answer being up to a Georgia appellate court.

Assuming that the State Act permits the electronic delivery of an insurance policy, the Federal Act imposes very specific requirements on such a delivery to a consumer. A consumer must affirmatively consent to the electronic delivery of an insurance policy and must not have withdrawn such consent, after the consumer has been provided a "clear and conspicuous statement" containing the following information:

1. Any right or option of the consumer to have the record in question provided and made available on paper;
2. The right of the consumer to withdraw the consent to have the record provided or made available in electronic form and any conditions, consequences (which may include termination of the parties' relationship), or fees that may be imposed in the event of such withdrawal;
3. A description of the procedures the consumer must follow to withdraw such consent and to update information needed to contact the consumer electronically;
4. A description of how the consumer, after consenting to the use of an electronic record, may obtain a paper copy of any such record and whether any fee will be charged for such a copy;
5. A statement about whether the consent applies only to the particular transaction in question or to identified categories of records that may be provided or made available during the course of the parties' relationship; and
6. A description of the hardware and software requirements for access to and retention of the electronic record in question by the consumer.

The Federal Act also requires that a consumer who has consented to the use of electronic records in a transaction must be informed (i) of any change in the hardware or software requirements necessary to access or retain records related to that transaction, which change creates a "material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent", and (ii) of the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequences that have not already been disclosed to the consumer.

If all the above requirements have been met, then the electronic delivery of an insurance policy to a customer would be a valid method of delivery under the Federal and State Acts. If the insurance policy is not a personal lines one or other consumer type insurance product, then the permission of the customer for the delivery of the policy by electronic means would be the only thing required. That permission should state how the electronic delivery will be made (e.g., if by e-mail, the e-mail address to which the insurance policy will be sent) and in what format the policy will be delivered (i.e., .jpeg, pdf., etc.) and contain an affirmative statement by the customer that they will be able to receive and to view the policy in that manner and format.

Where the insured has consented to the electronic delivery of an insurance policy, the State Act contains very detailed language regarding when and where such delivery will be deemed to have occurred, but it permits the parties to agree to a different method of acknowledging when and where delivery has occurred. In the absence of any agreement to the contrary, an electronic record sent by e-mail is deemed to be received when it enters the recipient's designated e-mail processing system in a format that is capable of being processed by that system and the document can be retrieved (i.e., viewed and printed out) from that system by the recipient. The State Act specifically provides that the "receipt of an electronic acknowledgment" from the recipient's designated e-mail processing system is proof of the delivery of the e-mail in question and any attachments to it, but it is not proof that the content of the e-mail and attachments that were sent is the same as what was received.

In summary, an insurance agent desiring to deliver an insurance policy electronically must first obtain the consent of the insured to such delivery, which consent must conform to the

above requirements of the Federal Act if the insured is a consumer. The consent can either be in electronic or written format. In all cases, that consent should specify the e-mail address to which the insurance policy is to be sent or other method of electronic delivery to be used and the format in which the policy will be sent, which e-mail address or other method of electronic delivery and format are acknowledged to be accessible by the insured. Consideration should be given to including in the consent an acknowledgement by the insured that the insurance policy will be deemed to have been delivered if it is sent to the specified e-mail address or via another method of delivery in the specified format. All e-mail deliveries of insurance policies should be accompanied by a request for acknowledgment of the receipt of the e-mail by the recipient's e-mail system.

This article is not intended to provide "legal advice" on the issues discussed in it. It is only for information purposes. The reader should seek advice from an attorney who is knowledgeable in this area of the law about their specific situation before acting. For other articles of interest to insurance agencies and agents, please see the website of Joyner & Burnette, P.C., at www.decaturn-law.com.

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