



COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

March 11, 2002

NORMATIVE LETTER NO.: N-L-02-15-2002

TO ALL AGENTS, BROKERS, AND NON-RESIDENT AGENTS AND BROKERS

**RE: ARTICLE 9.400 OF THE INSURANCE CODE OF PUERTO RICO, 26 L.P.R.A.
SEC. 940**

Dear Ladies and Gentlemen:

Article 9.400 of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 940, establishes the following:

“(1) When an insurance policy originally written through a particular agent or broker, whose premium has been billed and paid for in whole or in part, is cancelled and substituted by one or more policies with the same coverage or with additional coverage for the same insured through another agent or broker, whether or not written with the same insurer and whether or not written for the same term, the new agent or broker shall be liable to the originating agent or broker for the amount of any unearned commission, for the term comprised between the date of cancellation and the date of inception of the next anniversary of the original policy, if the premium corresponding to the policy year in which the cancellation occurs has been paid.

To the effects of this Article, ‘unearned commission’ means the commission that has been advanced, or paid, or credited to the account of an agent or broker for the premium which has been paid to and accepted by the insurer, but which the agent or broker is obliged to refund due to the cancellation of the insurance for which the premium was paid.”

(2) This section shall not apply as to life and disability insurances.”
In order to be able to apply the aforementioned provision of law, the following conditions are required:

- a. an insurance policy underwritten by an original producer;
- b. that the premium of the underwritten policy has been paid partially or entirely;
- c. the cancellation of said policy;
- d. the substitution of the cancelled policy for a new one with the same coverage or with additional coverage for the same insurer;
- e. that the new policy be transacted through a new producer;
- f. that the original producer has had to return unearned commissions to the original insurer.

The purpose of said article is to dissuade insurance producers from stripping other producers of their businesses and clients. For that reason, although the principle of good faith does not explicitly appear as one of the requirements for the application of this legal provision, we consider that the same is implicitly included since good faith is a principle that governs all business transactions.

Therefore, as a result of numerous approaches that the insurance producers have presented to us regarding Article 9.400 of the Insurance Code of Puerto Rico, supra, this Office establishes, as public policy, that the abovementioned provision of law shall be applicable solely in situations in which the principle of good faith has been duly observed at the moment of the issuance or renewal of a policy, that would eventually be cancelled and substituted by another policy through a new producer.

We consider that, as part of the mechanism to determine the existence of good faith in each particular situation that is being dealt with, every producer must immediately notify the change or appointment to the original producer. If the producer fails to notify the change of appointment and to retain evidence of having made such notice, it shall be interpreted that the appointment of the original producer continues in effect. The notice concerning the new appointment shall be made by certified mail with return receipt.

The producers are also ordered to faithfully comply with the cancellations required by the insureds. In these cases, the cancellation must be made in a prospective manner. Likewise, any date of the insertion of the policy shall be as of the date that the same is authenticated, except when a provisional certificate previously granted for those purposes exist.

Finally, with respect to group insureds, Article 9.400 of the Insurance Code of Puerto Rico, supra, shall not be applicable when the original producer has knowledge that his/her client-insured is requesting quotes through another producer prior to the

expiration date of the anniversary of a policy or the expiration of the terms of a policy and, notwithstanding decides to contract or transact the policy that eventually is cancelled, without the previous written approval of his/her insured client.

Strict compliance of the above is hereby ordered.

Cordially,



Fermín M. Contreras Gómez
Commissioner of Insurance