



Insurance Agents
& Brokers

A COMPLETE GUIDE TO:

Policy Nonrenewals & Cancellations

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DISCLAIMER

This document is not a legal opinion and should not be relied upon as such. The intent of this document is to provide a general background regarding the topic or topics discussed, not to provide legal advice. Producers and agencies should consult an attorney regarding specific situations and specific questions with respect to the topic or topics covered in this document. Neither the Insurance Agents & Brokers nor any of its employees shall be responsible for any errors or omissions regarding any statements made in this document, nor any errors or omissions regarding any statutes, regulations, court rules, and/or any other government documents cited in this document.

IN SUMMARY

Read about state-specific laws and regulations for cancellations and refusals to write or renew commercial lines, personal automobile and homeowners' insurance.

FREQUENTLY ASKED QUESTIONS

Commercial Lines

1. Is there a statute protecting cancellations & nonrenewals in Delaware?

Yes. In Delaware, the cancellation and nonrenewal for commercial liability lines are governed by Title 18 §531 and by the 18 Del. C. s.2102.

2. To which policies exactly does this statute apply?

It applies to commercial, governmental and professional liability insurance, other than automobile.

It does not apply to reinsurance, excess and surplus lines, residual market risks, workers' compensation, multi-state location risks, policies subject to retrospective rating plans, excess or umbrella policies and any other policies exempted by the Insurance Commissioner.

3. Are there any other exceptions?

Yes. The act does not apply to policies in effect for less than sixty days.

4. How can the carrier cancel a policy in effect for less than sixty days?

The carrier may cancel as long as it provides a 60-day advance notice and sends it by certified mail. If the cancellation is due to nonpayment, the advance notice is only 10 days and it can be sent by regular mail.

5. What is the basic framework of section 531?

Section 531 provides for:

- ▲ specific emergency powers granted the Commissioner in case of an abnormal disruption of the insurance market,
- ▲ the acceptable grounds for a cancellation or nonrenewal to be valid,
- ▲ the notice requirements for a cancellation or a nonrenewal.

USEFUL LINKS

Delaware Code:
Title 18: Insurance
[delcode.delaware.gov/
title18/c005/index.shtml#531](https://delcode.delaware.gov/title18/c005/index.shtml#531)

Delaware Regulations:
Title 18: Insurance
[regulations.delaware.
gov/AdminCode/
title18/2100/2102.
shtml#TopOfPage](https://regulations.delaware.gov/AdminCode/title18/2100/2102.shtml#TopOfPage)

USEFUL LINK

Delaware Code:
Title 18: Insurance, Chapter 5
[delcode.delaware.gov/
title18/c005/index.
html#531.](https://delcode.delaware.gov/title18/c005/index.html#531)

6. What are acceptable reasons for an insurer to cancel a policy in midterm?

An insurer may cancel a policy in midterm for the following reasons:

- ▲ nonpayment of a premium,
- ▲ material misrepresentation on the application,
- ▲ increased hazard or material change in the risk,
- ▲ substantial breaches of contractual duties affecting the risk,
- ▲ fraudulent acts by the insured against the insurer,
- ▲ lack of cooperation from the insured in loss control efforts,
- ▲ loss of, or reduction in, reinsurance,
- ▲ material increase in exposure due to changes in case law,
- ▲ loss of, or reduction in, insurance capacity.

7. When can an insurer nonrenew?

An insurer may nonrenew as long as the notice requirements are met.

8. What is an acceptable notice for cancellation or nonrenewal?

The notice must:

- ▲ be mailed or delivered to the first named insured at the mailing address shown on the policy, and to any person entitled to notice under the policy,
- ▲ be sent by certified mail,
- ▲ be sent at least 60 days, but not more than 120 days, in advance,
- ▲ state the specific reason(s) for cancellation or nonrenewal,
- ▲ state the effective date of cancellation,
- ▲ inform the insured that he/she may file a written complaint to the Insurance Department,
- ▲ inform the insured his/her request should be made immediately.

9. How much is the advance notice for a cancellation or a nonrenewal?

The notice must be sent at least 60 days but no more than 120 days in advance of the effective date of termination.

10. How much is the advance notice for a cancellation for nonpayment?

The advance notice is reduced to 10 days when the insured has failed to pay a premium. If the insured pays before the effective date, the insurer may not cancel the policy.

11. Are there any specific provisions?

The notice requirements entail that for OCP for example, the notice must be sent by certified mail both to the named insured and to the contractor shown in the declarations. For Railroad Protective, the notice must be sent by certified mail to the named insured, any involved governmental authority, and to the contractor shown in the declarations.

12. Is there any possibility that a cancellation would still be valid even without a notice to the insured?

Yes, if the insured has replaced coverage or requested termination, then the insurer does not need to send a notice. The insurer will need to keep evidence of the customer's request.

13. If the insurer has not sent a proper notice for cancellation or nonrenewal, what happens?

Until the insurer has provided proper notice, the policy keeps the expiring conditions and premium.

14. When an auto insurance policy is cancelled by the insurer, how much time does the carrier have to refund the unearned premium?

Based on regulation 611, effective Oct. 30, 2024, carriers have 30 days to process a premium refund for all auto policies (personal or commercial, including for policies subject to audit).

Homeowners

1. Is there a statute governing refusal to write, cancellation and non-renewal of homeowners' and property insurance in Delaware?

Yes. Refusals to write, cancellations and non-renewals are governed by Chapter 41 of Title 18 of the Delaware Code, entitled Property Insurance Contracts, and specifically Subchapter III.

2. To which policies does this statute apply?

The statute applies to all policies of property insurance, except inland marine and FAIR Plan business, and which insure:

- ▲ One-to-four unit, owner-occupied residential dwellings insuring against loss of or damage to real property; or
- ▲ Personal property used for personal, family or household purposes within the residential dwelling, and in which the named insured has an insurable interest.

3. What type of action is covered?

There are three distinct actions covered by the statute:

- ▲ Declination or refusal to write;
- ▲ Termination or mid-term cancellation; and
- ▲ Non-renewal.

For purpose of Delaware law, non-renewals are defined as a termination.

4. Are declinations of risks permitted under the statute?

Yes, declinations, or refusals to write, are permissible except for the following reasons:

- ▲ Based on race, religion, nationality, ethnic group, age, sex or marital status;
- ▲ Based solely on the lawful occupation or profession (does not apply to an insurer, producer that limits its market to one or several related lawful occupations or professions);
- ▲ Age or location of the resident except for business-related reasons that are not a mere pretext;
- ▲ Based upon a previous declination or termination; and
- ▲ Based upon the fact that the insured was previously covered in the FAIR Plan.

5. What are the rights of the applicant when a declination is made?

The applicant is entitled to an explanation that can be done in one of two ways. The applicant can be provided with an explanation at the time of declination or, if no explanation is provided, the applicant has 90 days from the date of notice of declination to make a written request and must then be provided the written explanation within 21 days of the request.

USEFUL LINKS

Delaware Code:
Title 18: Insurance, Chapter 41,
Subchapter III

[delcode.delaware.gov/
title18/c041/sc03/index.
shtml](https://delcode.delaware.gov/title18/c041/sc03/index.shtml)

6. Who is responsible for the explanation to the applicant?

The requirements to comply with the statute in this case depend on who is actually making the declination—the insurer or the producer.

7. If the insurer makes the decision, does the producer have a right to the reason as well?

Yes, when an insurer makes a declination decision, it must provide the producer with a written explanation.

8. What happens if the producer can't find any coverage for the applicant?

In the case where no coverage can be found through an admitted insurer other than the FAIR Plan, the producer is required to submit to the applicant a written explanation of all insurer declinations. The applicant does not need to make a written request for the explanation.

9. What about cancellations?

As mentioned above, cancellations take into account both mid-term cancellations and non-renewals, and there are both common and specific provisions dealing with each.

10. Are cancellations permitted?

Yes. Cancellations are permitted, but only for specified reasons:

- ▲ Nonpayment of premium;
- ▲ Fraud or material misrepresentation made by or with the knowledge of the named insured, either in obtaining the policy, renewing the policy, or in presenting a claim;
- ▲ Discovery of willful or reckless acts or omissions which increase any hazard insured against;
- ▲ The occurrence of a change in the risk which substantially increases any hazard insured against;
- ▲ Violation of any local fire, health, safety, building or construction regulation or ordinance which substantially increases any hazard insured against;
- ▲ A determination by the Commissioner that continuation of the policy would place the insurer in violation of insurance law;
- ▲ Real property taxes have been delinquent for two or more years at the time of cancellation.

11. Are non-renewals permitted?

Effective 10/01/24, amendments were adopted defining allowable practices regarding non-renewals. Insurers may non-renew policies based on:

- ▲ weather-related claims, if three or more weather-related claims have been made against the policy during the 36 months immediately preceding the expiration of the policy period;
- ▲ other claims, if two or more claims have been made against the policy during the 60 months immediately preceding the expiration of the policy period; or
- ▲ a combination of weather-related and other claims, if three or more claims have been made against the policy during the 48 months immediately preceding the expiration of the policy period.

Claims closed without payment cannot be used for the purpose of non-renewing the policy. Also see reasons described under questions #12 and 13.

12. Can an insurer non-renew based on an increase in hazard?

Yes. In addition to the reasons stated in question #11, an insurer may non-renew a homeowners' policy if the claim(s) shows a substantial change or increase in hazard since policy inception, and if the insurer treats all policyholders with similar circumstances the same.

13. Can an insurer non-renew for failure to repair or make changes to the property?

Yes. The insurer may non-renew if the insured has refused or failed to make repairs or changes after proper notification was given by the insurer. Proper notification would include a statement that failure to make the repairs or changes would constitute a breach of contractual duties, conditions or warranties leading to an increase in hazard for the insurer.

14. Can an insurer count an inquiry as a claim?

No. An insurer may not use an inquiry for the purpose of making any underwriting decision. A claim is broadly defined as "any contact initiated by an insured that is not the filing of a claim to an insurer."

15. Are there any other prohibitions or restrictions on terminations?

Yes. The same non-discriminatory practices outlined in Question #4 apply to all terminations (cancellations and non-renewals) as well.

16. For new business, is there any exception?

Yes. The law DOES NOT apply during the first 60 days that a new policy is in force. Cancellation can be initiated for ANY reason.

17. Is a notice of cancellation required?

Yes. When an insurer cancels coverage, it must provide to the policyholder a written notice of cancellation that can either be delivered or mailed to the named insured at their last known address and must provide the following:

- ▲ State the effective date of the cancellation
- ▲ Provide the specific reasons for the cancellation.

The notice must be provided at least 30 days in advance of the cancellation, 10 days if the cancellation is for nonpayment.

18. What about renewals?

At least 30 days prior to expiration, the insurer shall deliver or mail to the insured, at their last known address, either:

- ▲ A written offer of renewal if the applicable premium is received within a specified billing period; or
- ▲ Written notice of intent not to renew which includes a written explanation of the specific reason(s) for the non-renewal.

USEFUL LINKS

Delaware Code:
Title 18: Insurance, Chapter 39
[delcode.delaware.gov/
title18/c039/index.shtml](https://delcode.delaware.gov/title18/c039/index.shtml)

19. What happens if the policyholder claims they never received a notice of renewal or non-renewal?

An insurer is required to retain proof of mailing for at least one year, and must deliver the notices by certified mail or by USPS Intelligent Mail barcode. If they can't provide this proof, the policy will be deemed renewed until the named insured has accepted replacement coverage with another insurer or agreed to the non-renewal.

20. How is the law enforced?

Generally, the Insurance Commissioner has enforcement authority at any time as part of his general powers. A person can file a complaint within 90 days of the alleged violation. The Commissioner may then be required to hold a hearing and issue a determination.

21. What are the penalties?

If a producer violates this law, the Insurance Commissioner may issue a cease and desist order or assess a penalty of up to \$500 for each violation.

Personal Auto

1. Is there a cancellation or refusal to renew an auto policy statute in Delaware?

Yes. In Delaware, the cancellation or nonrenewal of an auto policy is governed by Title 18 Section 3903 et seq. of the Delaware Code.

2. To which policies does the statute apply?

It applies to policies in effect for greater than 60 days for four wheeled private passenger vehicles with a load capacity of 1500 pounds or less. The vehicle cannot be used for business purposes.

3. What is the basic framework of the law?

Section 3903 et seq. provides for the cancellation or nonrenewal of personal auto policies. The statute also provides for the reasons that a policyholder may be cancelled and it also outlines the time frame in which notices to the insured must be sent.

4. When can an insurer cancel or nonrenew a policy?

There are nine basic reasons outlined in the statute.

- ▲ Nonpayment of premium
- ▲ The policy was obtained through a material misrepresentation
- ▲ Any insured violated any of the terms and conditions of the policy
- ▲ If the application asks for accidents, moving violations or losses and the named insured knowingly failed to make full disclosure of those problems that occurred in the last 36 months
- ▲ If, on a renewal, the insured failed to disclose to the insurer facts relative to accidents and losses incurred when asked
- ▲ Any insured makes a false claim or aided or abetted another in the presentation of a false claim
- ▲ Certain criminal offenses, personal conduct or medical conditions
- ▲ A driver's license suspension (for a full explanation, see question 9)
- ▲ Condition or use of the vehicle can result in a nonrenewal

5. What medical conditions can result in cancellation or nonrenewal?

If the insured has a history of, and is subject to, epilepsy or heart attacks they may be cancelled or nonrenewed if they are unable to produce a certificate from a physician testifying to their unqualified ability to operate a vehicle safely.

6. What criminal offenses or personal conduct issues can result in nonrenewal or cancellation?

In short, a bunch. Here's a partial list:

- ▲ Using alcoholic beverages to excess;
- ▲ Drag racing while the policy is in effect;
- ▲ Committing a felony;
- ▲ Criminal negligence resulting in death or assault while using a vehicle;
- ▲ DUI;
- ▲ Leaving the scene of an accident without stopping to report;
- ▲ Theft of a vehicle; and
- ▲ Making false statements in an application for a driver's license.

7. What conditions or uses of the vehicle can result in a nonrenewal or cancellation?

If the vehicle is in serious disrepair or used for certain purposes the policy may be nonrenewed or cancelled. Here's a list:

- ▲ The vehicle is so mechanically defective that the operation might endanger the public safety;
- ▲ The vehicle is used in the business of transporting flammables or explosives;
- ▲ Used as an emergency vehicle;
- ▲ Modified or changed in condition during the policy period so as to substantially increase the risk;
- ▲ The vehicle is used for passenger transport for hire (carpooling is not included).

8. What if my insured or a member of the household has his license suspended or revoked?

Your insured (or an operator who resides in the same household or customarily operates an automobile insured under the policy) may be cancelled if there was a license suspension or revocation in the last 36 months. This does not apply when children have their licenses revoked or suspended for underage drinking or a when there are non-driving drug offenses involved.

9. What if my insured doesn't pay the premium, gets a cancellation notice, then pays?

If your insured doesn't pay the premium they may be cancelled. If the insured pays the premium within 30 days past due, the insurer must renew the policy under the same conditions and at the same rates or premiums had the insured paid his premium when due. The insurer is not liable for losses during the lapse period.

10. What are the requirements when canceling for claims history?

The insured can be cancelled or nonrenewed if the insured has been convicted of, or forfeited bail, for three or more violations that total more than 8 points in the last 36 months. Also, the insured can be cancelled or nonrenewed if three at-fault accidents occur in which claims are paid in excess of \$250 per accident.

11. Can an insurer cancel, nonrenew or refuse to write because of an old claim?

The statute only addresses claims that occur within the last 36 months.

12. Can an insurer cancel or nonrenew for claims where the insured was not at fault?

The statute address this. The law specifically states that the accidents are at-fault. Further, to count the claim, it must be for more than \$250.

13. What can an insured do if he thinks he has been unfairly cancelled?

In the cancellation or nonrenewal notice to the insured, (except for policies in effect for less than 60 days) there must be a statement informing the insured of their right to apply to the Commissioner for a hearing.

14. What is an acceptable notice for cancellation or nonrenewal?

The notice must be sent must be sent by certified mail (except for cancellation for nonpayment) and state the reasons for the cancellation or nonrenew in order to be effective.

15. How much notice does the insured get?

For nonpayment of premium the insured gets 10 days advanced notice, for all other reasons the insured gets 30 days.

16. When an auto insurance policy is cancelled by the insurer, how much time does the carrier have to refund the unearned premium?

Based on regulation 611, effective Oct. 30, 2024, carriers have 30 days to process a premium refund for all auto policies (personal or commercial, including for policies subject to audit).

WHAT ABOUT ELECTRONIC CANCELLATION NOTICES?

Information on state laws governing the acceptability of electronic notices, including for purposes of non-renewal and cancellation.

Can insurers send policy documents and other notices electronically to policyholders?

Yes. HB 223, passed during the 2012 legislative session, permits notices, policies and other insurance documents to be delivered electronically so long as the policyholder gives consent. The provisions of HB 223 have been incorporated into Delaware's Insurance statutes (see 18 Del. C. section 107).

NOTE - The provisions of HB 223 **do not apply** to a notice of cancellation or termination of health insurance or benefits, or life insurance (excluding annuities).

When

Effective May 22, 2012

What?

Electronic means include e-mail or posting to a secure online network and are now equivalent to first-class or certified mail.

How?

The law stipulates that policyholders will have to give their express consent to electronic methods of communication after reviewing a statement that outlines the parameters including:

- ▲ Their right to withdraw their consent at any time
- ▲ The hardware and software requirements for receiving the electronic notices
- ▲ Means (including applicable fees) of obtaining a paper copy in addition to the electronic copy

This law greatly draws on existing federal and state laws governing electronic transactions (specifically E-SIGN and the Uniform Electronic Transactions Act, or UETA).

USEFUL LINKS

Delaware Code:
Title 18: Insurance, Chapter 1
[delcode.delaware.gov/
title18/c001/index.shtml](http://delcode.delaware.gov/title18/c001/index.shtml)

E&O BEST PRACTICES

How to discontinue the practice of contacting customers whose payments are overdue

Questions:

We regularly receive questions such as the following:

“Our agency has been sending cancellation letters to policyholders who have a cancelled policy in addition to the letter they already receive from the insurer. This is done as a courtesy but with the rising cost of postage, we want to stop. Are there any legal issues we should be looking out for or is it safe to just stop the practice?”

“Our agency is calling clients who are overdue in their payments and are pending cancellation. Can we stop doing it?”

Answer:

Because you have sent notices in the past, you now must inform your customers that the practice will be discontinued. Customers have come to rely on this practice, and stopping without notice leaves the door open for potential E&O claims.

Document your notification: It is important that you properly document the fact that you notified your customers of the change. The best practice would be a certified letter return receipt requested. Other methods, such as regular mail or phone calls, would be acceptable too.

Make sure that you apply the procedure consistently and that you do not provide preferential treatment towards any of your clients.

Notify your customers that you will discontinue the practice of contacting them when their payment is late using our sample letter. Electronic means include e-mail or posting to a secure online network and are now equivalent to first-class or certified mail.

Correcting the practice:

Because you have sent notices in the past, you now must inform your customers that the practice will be discontinued. Customers have come to rely on this practice, and stopping without notice leaves the door open for potential E&O claims.

Document your notification: It is important that you properly document the fact that you notified your customers of the change. The best practice would be a certified letter return receipt requested. Other methods, such as regular mail or phone calls, would be acceptable too.

Make sure that you apply the procedure consistently and that you do not provide preferential treatment towards any of your clients.

Sample Letter

Notify your customers that you will discontinue the practice of contacting them when their payment is late using our sample letter.

APPENDIX

Sample letter

SAMPLE LETTER NOTIFYING CUSTOMERS THAT YOU WILL DISCONTINUE CONTACTING THEM DUE TO LATE PAYMENT

[Insert date]

Client name

Address line 1

Address line 2

RE: your insurance policy(ies) with [Agency name]

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Dear [insert customer name]:

In the past, [insert Agency name] may have contacted you when we noticed that the payment of your insurance premium, generally billed directly by the company, was late.

Effective immediately, our agency will discontinue this practice. Experience shows that the practice rarely helps and is now discouraged by the industry. In addition, over-reliance on an agency call could actually detract from prompt payment, and lead some customers to lose sight of the threat of imminent cancellation by the insurance company.

We urge you to make all premium payments by the due date indicated on the invoice in order to avoid cancellation of your insurance policy.

Since Property and Casualty insurance companies are generally not required to reinstate a policy that has been paid after the due date, even if the payment is received before the cancellation takes effect, it is essential to make prompt payments in order to guarantee that your coverage continues without interruption.

We certainly hope that this action will not be of any inconvenience to you. Please feel free to contact us with any questions or concerns.

Sincerely,

[insert agency principal or producer name]

NOTES

- ▲ Adapt as needed & personalize to the agency
- ▲ Best practice is to send certified, return receipt requested.
- ▲ A Word version of this letter is available at www.iabforme.com/member-resources/agency-management/carrier-resources/