VERMONT DEPARTMENT OF FINANCIAL REGULATION

REGULATION I-2014-01

ELECTRONIC INSURANCE NOTICES

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Section 1. Authority

This regulation is promulgated pursuant to the authority granted by 8 V.S.A. §§ 15, 3666 and chapters 105, 113, and 128.

Section 2. Purpose

The purpose of this regulation is to set forth rules and procedural requirements which the Commissioner deems necessary to permit certain insurers to send certain notices to policyholders by electronic means.

Section 3. Severability Clause

If any provision of these regulations or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

Section 4. Definitions

A. "Delivered by electronic means" includes:

(1) Delivery to an electronic mail address at which a party has consented to receive notice; and

(2) Posting on an electronic network, or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.

B. "Party" means any recipient of any notice required as part of an insurance transaction, including but not limited to an applicant, an insured, or a policyholder.

Section 5. Delivery of Notices by Electronic Means

A. Subject to subsection (C) of this section, any notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of title 8 V.S.A. may be but is not required to be delivered by electronic means, provided the process used to obtain consent of the party to have notice delivered by electronic means meets the requirements of 9 V.S.A. chapter 20 (the Uniform Electronic Transactions Act).

B. Delivery of a notice pursuant to subsection (A) of this section shall be considered equivalent to any delivery method required under section 3883, 4226, or 4714 of title 8 V.S.A., including delivery by first-class mail, certified mail, or certificate of mailing.

C. A notice may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to such method of delivery and not subsequently withdrawn consent;

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(i) The right of the party to have the notice provided or made available in paper or another nonelectronic form at no additional cost;

(ii) The right of the party to withdraw consent to have notice delivered by electronic means, at any time, and any conditions or consequences imposed in the event consent is withdrawn;

(iii) Whether the party's consent applies:

(a) Only to the particular transaction as to which the notice must be given; or

(b) To identified categories of notices that may be delivered by electronic means during the course of the party's relationship with the insurer;

(iv) How, after consent is given, the party may obtain a paper copy of a notice delivered by electronic means at no additional cost; and

(v) The procedures the party must follow to withdraw consent to have notice delivered by electronic means and to update information needed to contact the party electronically;

(3) The party, before giving consent:

(i) Is provided with a statement of the hardware and software requirements for access to and retention of a notice delivered by electronic means as to which the party has given consent; and

(ii) Consents electronically and confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices delivered by electronic means as to which the party has given consent; and

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies:

(i) Provides the party with a statement of:

(a) The revised hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(b) A revised statement required by subdivision (2) of this subsection; and

(ii) The party affirmatively consents to continued delivery of notices by electronic means.

D. If a provision of chapter 105, 113, or 128 of title 8 V.S.A. requiring notice to be provided to a party expressly requires verification or acknowledgement of receipt of the notice, the notice may be delivered by electronic means only if the method used provides for verification or acknowledgement of receipt. Upon notification to the insurer that the electronic notice was not deliverable, the insurer shall send a paper copy of the notice as otherwise required by law.

E. The legal effectiveness, validity, or enforceability of any contract or policy of insurance may not be made contingent upon obtaining electronic consent or confirmation of consent of a party in accordance with subdivision (C)(3)(ii) of this section.

F. Withdrawal of consent:

(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within 30 days after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (C)(4) of this section shall be treated as a withdrawal of consent for purposes of this section.

G. A party who does not consent to delivery of notices by electronic means under subsection (A) of this section or who withdraws his or her consent shall not be subjected to any additional fees or costs for having notices provided or made available in paper or another nonelectronic form.

H. This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, as amended.

Section 6. Interpretation

The delivery of notice in accordance with Section 5 of this regulation is intended and shall be construed to meet the requirements of Department Insurance Regulation 78-01, Section 1, as revised.

Section 7. Effective Date

This regulation shall become effective September 18, 2015.