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Follow the Rules If You Want to Cancel a Policy in Nevada

By Andrew B. Downs

While it might seem self-evident, states expect insurers to follow, to the letter, the detailed statutes governing cancellation of policies. Last week, an insurer learned that lesson the hard way in Nevada. The insurance broker had a better day, however, as the Nevada Supreme Court held it had no duty to monitor premium payments and then alert the policyholder when the policy was about to be canceled for non-payment of premium.

O.P.H. of Las Vegas, Inc. v. Oregon Mut. Ins. Co., 133 Nev.Adv.Op. 60 (9/14/2017) came in the aftermath of a fire that destroyed the Original Pancake House in Las Vegas. O.P.H. had missed a premium payment, which led Oregon Mutual to issue a cancellation notice. The Nevada Statutes require that if a cancellation notice "does not state with reasonable precision the facts on which the insurer's decision is based, the insurer shall supply that information within 6 days after receipt of a written request by the policyholder." NRS 687B.360. That statute also provides "No notice is effective unless it contains adequate information about the policyholder's right to make such a request." The Nevada Supreme Court concluded that a notice of cancellation which explained why the policy was being canceled (non-payment) but didn't inform the policyholder of its right to request additional information did not comply with the statute.

Not surprisingly, the insurer argued the statute was drafted using conditional language "If a notice of cancellation . . . does not . . ." thus excusing the insurer from including language on the policyholder's right to request additional information if sufficient information was provided in the notice itself. The Nevada Supreme Court disagreed, finding the "No notice is effective . . ." statutory language required notice of the right to request information regardless of whether the insurer's original notice substantially complied with the statutory requirements. The court concluded strict compliance should be required, in part to avoid inviting future litigation about what was and was not substantial compliance with the statutory requirements.

Insurers can and will fix their cancellation forms. *O.P.H.* may be more important in the long term for its discussion of broker liability. The policyholder argued the broker had a "de facto fiduciary duty" to monitor the premium payments and to alert the policyholder when the policy was at risk of cancellation. The Nevada Supreme Court held the duty of the insurance broker is to use reasonable care and judgment in *procuring* the insurance, but that duty did not extend to monitoring premium payments unless the broker chose to assume that obligation.

Nevada law, as stated in *O.P.H.*, is consistent with the law in many other jurisdictions—cancellation notices statutes provide insurers with little wiggle room and must be complied with, particularly where they contain mandatory language such as "No notice is effective."