

**NON-RENEWAL OF POLICIES WRITTEN BY AN INDEPENDENT AGENT  
CAN IT BE DONE? THE ILLINOIS VIEW**

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Some of our clients have been criticized by the Illinois Division of Insurance (“DOI”) for non-renewing certain policies written by an independent agent whom had previously been terminated by the Company. The DOI has taken the position that a company may never non-renew, cancel or terminate a policy solely on the basis that the Company’s contract with the independent agent has been terminated except when the policy does not meet the company’s underwriting guidelines or when the terminated agent notifies the company that the policy has been placed with another insurer. The DOI’s position is based on two statutory provisions: Sections 141.01 and 141.02 of the Illinois Insurance Code (215 ILCS 5/141.01 and 5/141.02).

**Sec. 141.01.** No company authorized to do business in Illinois shall cancel, terminate or refuse to renew any policy on the ground that the company’s contract with the agent through whom such policy was obtained has been terminated. This provision shall not alter any contract between the agent and the company regarding ownership of expirations where the agent is able to place the policy with another insurer with similar coverage to the satisfaction of the insured. (Source: P.A. 80-1374.) (215 ILCS 5/141.01)

**Sec. 141.02.** (1) Definitions. For purposes of this Section an independent insurance agent is any licensed agent representing an insurance company on an independent contractor basis and not as an employee. This term shall include only those agents not obligated by contract to place insurance accounts with any insurance company or group of companies. This Section shall only apply to contracts which have been effective for more than one year between an independent insurance agent and any company authorized in this State for the purpose of transacting the kind or kinds of business enumerated in Class 2 or Class 3 of Section 4 of this Code, except accident and health insurance.

(2) Rehabilitation. In an effort to avoid termination, the company and agent may endeavor to reach mutual agreement on a written plan for rehabilitation for a period of time agreed by them. Any written plan agreed upon shall identify the problem areas and specify what the agent must do in an effort to avoid termination.

(3) Notice of Termination. Contracts between the independent insurance agent and any company shall not be terminated by the company except by signed mutual agreement at the time of written termination notice or unless the company provides 180 days written notice to the independent insurance agent prior to the effective date of termination. The effective date of termination shall be 180 days from the date of mailing of the termination notice. The company must maintain proof of mailing of the termination notice on a recognized U.S. Post Office form.

(4) Renewals following termination. A. During the 180 days notice or other mutually agreed time period the independent insurance agent shall not write or bind any new business on behalf of the terminating company without specific written approval.

B. The terminating company shall, following the date of termination, renew all policies written by the independent insurance agent for one policy term or for a period of one year if the policy period is longer than one year unless:

(a) the policies do not meet the insurer’s underwriting standards; or  
(b) the independent insurance agent notifies the insurer in writing that the policy has been placed with another insurer.

C. If a renewal policy does not meet the underwriting requirements, the terminating insurer must give the independent insurance agent 60 days notice of its intention not to renew.

D. The rate of commission and renewal terms shall be in accordance with those in effect immediately prior to termination. The commission must be paid only through the first renewal subsequent to the effective date of the termination.

(5) Paragraphs (1) through (4) of this Section shall not apply to terminations for abandonment, insolvency of the terminating company, gross and willful misconduct, refusal, suspension, revocation or termination of the agent's license by the Director of Insurance, sale or material change of ownership of agency, fraud, material misrepresentation or failure to pay such independent insurance agent's account less the independent insurance agent's commission and any disputed items within 30 days after written demand by the company. (Source: P. A. 85-334.) (215 ILCS 5/141.02)

In response to DOI's criticism, we assert that Illinois law provides for an additional exception to the general prohibition against non-renewal of policies due to the writing agents' termination. That exception is also found in Section 141.02 of the Illinois Insurance Code. Specifically, the statute permits a Company to non-renew a policy if the following conditions are met:

- a terminated independent agent contract was in effect for more than one year;
- the policy is for property and casualty coverage; and
- following the independent agent's termination, the Company renewed the policy for a policy term or a one year period, whichever is greater.

Section 141.02 would appear to permit a company to non-renew a policy written by a terminated independent agent on grounds that the independent agent no longer represents the Company so long as the Company complies with the mandatory renewal requirement set forth in Section 141.02(4)(B).

**“B. The terminating company shall, following the date of termination, renew all policies written by the independent insurance agent for one policy term or for a period of one year if the policy period is longer than one year unless: . . .”**

This conclusion appears to conflict with the general prohibition against non-renewal for agent termination set forth in Section 141.01. However, as these two statutes deal with the same subject matter, the rules of statutory construction require that they be viewed together and both be given effect, if reasonably possible. (*See generally*, Sutherland Statutory Construction, Sec. 51.01-51.05 (6<sup>th</sup> Ed., 2002)).

Several rules of statutory construction pertain to this issue. Statutes in *pari materia* (on the same subject matter) should be construed together and construed in harmony. *Heron v. E. W. Carrigan Construction Co.*, 149 Ill 2d 190, 595 NE 2d 561 (1992). It must be assumed that the legislature is cognizant of previous statutes relating to the same subject matter when it enacts legislation on that subject matter. Such statutes should be construed together, if reasonably possible. *People v. Davis*, 199 Ill 2d 130, 766 N22nd 641 (2002). If the conflict between the older and newer statute is unreconcilable, the newer statute will control as it is a latter expression of the legislature. *People v. Maya*, 105 Ill 2d 281, 473 NE2d 1287 (1985).

Additionally, where there is one statute that deals with a subject matter in general terms, and another statute that deals with part of the subject matter in a more specific, detailed manner, the two statutes should be harmonized if possible. *Sierra Club v. Kinney*, 90 Ill. App. 3d 230, 412 NE2d 970 (4<sup>th</sup> Dist. 1980). However, if there is any conflict between the two statutes, the specific statute prevails over the general statute and should be applied. *People v. Botruff*, 212 Ill 2d 166, 817 N.E.2d 463 (2004).

In this situation, there are two statutes that address the same subject matter; the renewal of a policy upon termination of the independent agent who wrote the policy. Section 141.01 is the general statute that contains the general prohibition against the non-renewal of a policy on grounds of termination of the agent's contract with the insurer. Section 141.02 is the more specific statute that provides for a specific exception to the general prohibition against non-renewal of the policy. Section 141.02 permits the non-renewal of the policy in this situation, but only if the policy was originally written by an independent agent and the policy was previously renewed for the required statutory period. In view of the statutory construction principles set forth above, Section 141.02 should prevail over Section 141.01, as it is the much more specific statute of the two. Additionally, the two statutes can and should be

read in harmony, but only if Section 141.02 is construed to provide an exception to the general non-renewal prohibition set forth in Section 141.01. To construe Section 141.02 otherwise would render the language in Section 141.02(4)(B) meaningless, which is contrary to these principles of statutory construction.

It should also be noted that Section 141.02 was first enacted in July of 1984 and subsequently amended effective January 1, 1988. Section 141.01 was enacted much earlier in January of 1979. Under Illinois statutory construction principles, it must be assumed that the legislature was cognizant of Section 141.01 when it enacted and subsequently amended Section 141.02. If these statutes cannot be construed together, then the more recent of the two, Section 141.02 must be given effect as it is the latter expression of the legislature. *People v. Maya*, infra. Therefore, the two statutes can be construed together as discussed above. However, if the DOI insists there is a conflict between the two, the rules of statutory construction adopted by the courts of Illinois require that Section 141.02 be construed to provide for the limited exception as set forth in Section 141.02(4)(B) to the general rule prohibiting the non-renewal of a policy on grounds of termination of the writing agent's contract.

The matter is still pending before the DOI and it will remain an open issue until a final determination is made by the DOI or the courts. In the meantime, DOI will likely maintain its current position in market conduct exams.

#### *Endnotes*

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