



REGULATORY GUIDANCE

Clarification Regarding the Freedom to Choose Insurance Company and Insurance Professional Notice

The Financial Institutions Division (FID) is providing clarification regarding the Freedom to Choose Insurance Company and Insurance Professional Notice (Freedom to Choose Notice or Notice) to consumers of real and personal property. The Freedom to Choose Notice is mandated by the Insurance Code, NMSA 1978, Section 59A-16-14(A) (2017). The Office of the Superintendent of Insurance has adopted 13.7.2.8 NMAC, which contains the language of the Notice:

FREEDOM TO CHOOSE INSURANCE COMPANY AND INSURANCE PROFESSIONAL

The undersigned person hereby acknowledges that I have been informed by (individual's name) on behalf of (name of lender) that, although I may be required by the seller or lender to purchase insurance to cover the property that is being used as security for the loan, I may purchase that insurance from the insurance company or agent of my choice, and cannot be required by the seller or lender, as a condition of the sale or loan, to purchase or renew any policy of insurance covering the property through any particular insurance company, agent, solicitor, or broker. I hereby acknowledge receipt of a true copy of this notice on the ____ day of _____, ____.

(Signature of Purchaser or Borrower)

The issue presented to the FID relates to filling in the blank - "(individual's name)." It has been the practice of some sellers and lenders to insert the company name into the blank. The FID deems this practice inappropriate and asserts that the blank must contain the name of the individual who provides the Freedom to Choose Notice to the consumer. The term "individual" is not defined in the Insurance Regulations of Chapter 13 of the NMCA. However, the Insurance Code defines "individual" as "a



natural person, a human being." NMSA 1978, § 59A-1-10(B) (1984). As the Insurance Code is the enabling statute for Chapter 13 NMCA, its language is binding. Therefore, the Notice requires a natural person's name to be inserted into the "(individual's name)" blank.

In conclusion, when notifying a consumer of their Freedom to Choose Insurance Company and Insurance Professional, the notice necessitates the inclusion of the name of the actual person providing the Notice to the consumer.

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