

Ethics Training for Producers

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Disclaimer

The information in this presentation is intended to provide a general overview of the issues contained herein and is not intended, nor should it be construed, to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.





Agenda

- Ethical Issues for the Insurance Industry
 - Louisiana Governmental Ethics Code
 - Professional Associations
- Agents and Brokers Defined
- General Responsibilities
- Responsibilities to the Insurer
- Responsibilities to the Client
- Issues Facing Producers





Governmental Ethics

“When a man assumes a public trust, he should consider himself as public property.”

Thomas Jefferson, 1743-1826





Governmental Ethics

- Most States have laws which govern the behavior of public employees. The laws address employee interaction with third parties. This can include contractors, insurance companies as well as the general public.
- These laws generally address lobbying and to a certain extent the public employees ability of participate in the political process.





Purpose of Governmental Ethics Laws

Louisiana

“It is essential to the proper operation of democratic government that elected officials and public employees be independent and impartial; that governmental decisions and policy be made in the proper channel of the governmental structure; that public office and employment not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired when a conflict exists between the private interests of an elected official or a public employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and that it establish appropriate ethical standards with respect to the conduct of elected officials and public employees without creating unnecessary barriers to public service. It is the purpose of this Chapter to implement these policies and objectives.”





Who is Governed by State Ethics Laws?

- Public Employees
- Elected and Appointed Officials
- State Board Members
- Family members of designated persons
- Third Parties contracting with the State
- Lobbyists





Governmental Ethics

- Gifts and Incentives
- Food and Drink Restrictions
- Travel Related Matters
- Outside Employment
- Conflict of Interest
- Other considerations
- Disciplinary Actions





Gifts and Incentives

- Most states have limitation on the acceptance of gifts by government employees. Some states prohibit any gift from a “prohibited source” while other states allow the acceptance of gifts in limited situations.
- Gifts are generally defined as anything of monetary value accepted by the person or on that person’s behalf.





Gifts and Incentives

- Louisiana

No public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person who has or is seeking a contractual, business, or financial relationship with the public servant's agency.

- Florida

No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.





Exceptions to Gift Prohibition

- Dollar Amount: Some states allow the acceptance of gifts valued at a nominal amount such as \$25.00 or less with an aggregate total. – Louisiana does not.
- Promotional items having no resale value.
- Gifts accepted on behalf of the state that become state property.
- Flowers or a donation in connection with death if the value does not exceed \$100.





Food and Drink Restrictions

- In some states the food and drink prohibitions are the same as the gift prohibitions.
- In other states, there are exceptions to the food and drink meal. These exceptions include
 - Meals provided at public events which you attend in your capacity as a state employee; (some states have cost limits)
 - Meals provided to you when you are the speaker or panelist
 - Meals which are served as part of an event, conference, etc. which you are attending as part of job duties or responsibilities (NAIC meeting)
 - Beverages, snacks, (i.e. coffee, juice, doughnuts) that are not considered part of a meal;
 - Meals consumed by the employee in the presence of the source; (Generally cost limits)
- Gift cards and gift certificates are generally not part of the exception for food and drink.





Food and Drink Restrictions

Louisiana

No person from whom a public servant or public employee is prohibited from receiving a thing of economic value shall give to such a public servant of public employee any food, drink, or refreshment the total value of which exceeds fifty dollars for a single event at which food, drink, or refreshment is given. The total value of the food, drink, or refreshment given to a public servant or public employee at any single event shall not exceed fifty dollars regardless of the number of persons subject to the provisions of this Subsection giving food, drink, or refreshment to the public servant of public employee at the single event.





Exceptions to Food and Drink Rule

- Food or drink consumed at a gathering of a national or regional organization or a meeting of a statewide organization of government officials or employees to which at least 10 individuals associated with the organization are invited.
- Public servant of a post secondary institution in an event held for fund-raising from private individuals for the benefit of the institution.





Travel Related Matters

- Travel related matters also fall into the prohibition of receiving things of economic value.
- Some states have a prohibition against any travel other than that authorized and paid for by the state agency or government.
- Exceptions to travel generally fall within the following exceptions: (cost limits)
 - a. The trip must be related to the official duties of the participating employee. Attendance at a meeting, conference or a speaking engagement, or participation in a fact-finding trip.
 - b. The trip is for educational or professional development.
- Some states can accept reimbursement for employee travel and others cannot.





Louisiana Travel Exception

Necessary expenses

A public servant may receive payment or reimbursement for necessary expenses if he, in his official capacity, actively participates in an educational or professional development seminar or conference. For example by giving a speech or presentation or running a workshop.

Necessary expenses are limited to

- Travel (coach or economy class)
- Lodging (standard cost of room for the nights before, of, and immediately following the event)
- Admission

Expense payments also do not include payment of expenses for family members or other guests. Must file ethics form within 60 days after acceptance.

Must have agency approval. Must be invited by a civic, non-profit or political organization.





Outside Employment

Generally prohibited

- If the outside employment is with a person who does or is seeking to do business with the employee's agency
- If the employee's agency regulates the entity
- If the employee or his family has an economic interest which may be affected by the performance or non performance of the employee's official duties
- If the outside employment is related to official duties
- If there is an appearance of impropriety.

In several states, any outside employment must be approved by agency prior to accepting





Conflict of Interest

Conflict of interest is any situation in which a person has an actual, potential, or perceived interest that may

- Influence the performance of their duties and responsibilities toward their agency.
- Compromise or appear to compromise their professional judgment or integrity in performing their official duties.
- Prevent a person from rendering unbiased and fair services to their agency and from acting in the best interest of their company.

Generally prohibited in all states





Other Considerations

- Undue Influence
- Abuse of Office
- Nepotism
- Post Employment Issues





Disciplinary Actions

Actions which can be taken for a violation of state ethics rules vary from censure to prison terms.

They can include

- Fines
- Forfeiture of the gift or payments received
- Removal or suspension from employment
- Demotion
- Prison





Governmental Ethics

- Each state has specific guidelines governing the conduct of their employees. In order to determine the provisions of an individual state, you should look to that state's ethics laws.
- Most states require public officers and employees to engage in ethical training on an annual basis.
- Also note that ethics laws govern individual action and is the responsibility of the individual to make any reports or notifications to its Ethics Office.





Insurance Department Ethics and Policy

Insurance Departments either through statute, policy, or regulation govern their employees' ethical and legal behavior toward the entities they regulate, consumers, third parties, and the general public.





Departmental Ethics Policies

- Confidentiality and Privacy
- Conflict of Interest
- Social Media Policies
- Disciplinary Actions





Confidentiality and Privacy

- Every state insurance department has laws governing its handling of confidential, privileged and proprietary information.
- Part of the accreditation process is a review of the state's confidentiality laws and its ability to share that information with other states.
- Some insurance departments also have specific policies regarding the handling of confidential information.





Confidentiality and Privacy

Generally there is statutory law governing the Insurance Departments' handling of

- Exam work papers
- Mergers and acquisitions
- Personally identifiable information of consumers
- Some Regulatory Actions, i.e. Administrative Supervision
- Proprietary and confidential information from insurance companies
- Investigations including fraud
- Other matters specifically designated by statute





Confidentiality and Privacy

Departmental Directives

As part of some departments' employment criteria, the employee must read and review the confidentiality requirements and sign a document attesting that they have read the policy and will abide by it.





Sample Confidentiality Policy

Louisiana Confidentiality Policy

The Department of Insurance (LDI) protects from disclosure certain information and records of employees and regulated and audited entities as required under Constitutional or statutory law. It is of the utmost importance that staff does not disclose protected information and records to unauthorized persons. It is the responsibility of staff to act in a manner that promotes the department's mission and the integrity of the regulatory process. Examples of protections include the following: private, confidential or proprietary and trade secret information, ongoing investigations, sensitive personnel matters, legal proceedings, ongoing audits, the deliberative process, attorney work product and attorney-client communications.





Conflict of Interest

- Most conflict of interest concerns are covered by the State governmental laws which were discussed earlier.
- Most departments require that you avoid transactions which involve an insurance company under the supervision and regulation of the department. (This does not include purchase of insurance for personal use or involving a personal insurance dispute.)
- Also avoid such transactions with agents, producers or others which the department regulates.





Professional Organizations' Code of Ethics

- Most professional organizations have ethical guidelines or codes to govern the activities of their members.
- The failure of members to adhere to these Codes or guidelines can result in sanctions up to and including termination from the organization.
 - Society of Financial Examiners (SOFE)
 - Insurance Regulatory Examiners Society (IRES)
 - Chartered Property Casualty Underwriters (CPCU)
 - State Bar Associations (ABA)
 - American Institute of CPAs (AICPA)





Professional Organizations – Code of Ethics

Society of Financial Examiners (SOFE)

Preamble

It is a privilege to serve one's Government, State or agencies identified therewith. Such privilege calls for the maintenance by public servants of moral and ethical standards which are worthy and which warrant the confidence of the people. Public officials are entrusted with the welfare, prosperity, security, and safety of the people whom they serve. In return for such trust, the people are entitled to expect that no substantial conflict between private interests and official duties exists in respect to those who serve them.

Example of Provisions

- Members of the Society shall at all times conduct themselves in accordance with the dignity of their profession and their responsibilities to the public.
- Members shall, at all times, demonstrate the qualities of honesty and trustworthiness.
- Members, by their conduct, shall not give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position, or influence of any party or person.





Professional Organizations – Code of Ethics

Insurance Regulatory Examiners Society (IRES)

Article III- Integrity:

To maintain and broaden public confidence, members should perform all regulatory responsibilities with the highest sense of integrity. Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions. Integrity requires a member to be, among other things, honest and candid within the constraints of statutory confidentiality. Service and public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit and subordination of principle. Integrity also requires a member to observe the principles of objectivity and independence and due care.





Professional Organizations – Code of Ethics

Chartered Property Casualty Underwriters (CPCU)

CANON 1

Insurance professionals should endeavor to place the public interest above their own.

Rules of Professional Conduct

R1.1: A CPCU should avoid even the appearance of impropriety when performing his or her professional duties and should act in a manner that ultimately will best serve his or her own professional interests. However, potential conflicts of interest may arise, or may appear to arise, because many CPCUs simultaneously must balance multiple professional interests with their personal interests and the best interests of the general public. The ethical obligation to place the public interest above personal interests or financial gain extends to every CPCU, regardless of whether the CPCU's occupational position requires direct contact with actual or prospective insurance consumers. This does not imply that insurance purchasers should be given preferential treatment over insurance claimants because the needs and best interests of insurance purchasers are in fact served only when all insurance claimants, including third-party liability claimants, are accorded prompt, equitable, and otherwise fair treatment.





Professional Organizations – Code of Ethics

American Bar Association (ABA)

Maintaining the Integrity of the Profession

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.





Professional Organizations – Code of Ethics

American Institute of CPAs (AICPA)

Preamble

These Principles of the Code of Professional Conduct of the American Institute of Certified Public Accountants express the profession's recognition of its responsibilities to the public, to clients, and to colleagues. They guide members in the performance of their professional responsibilities and express the basic tenets of ethical and professional conduct. The Principles call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage.

Sample Rule

01 Rule 102—Integrity and objectivity

In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.





Professional Organizations – Code of Conduct

Disciplinary Actions

- SOFE- Fines or Reprimands to Expulsion
- IRES- Suspension or Expulsion
- CPCU- Reprimand to Revocation of Designation
- State Bar- Admonition to Disbarment
- AICPA- Suspend, Expel, or Lesser Sanctions as decided by the Board





Other Ethical Concerns

- State Insurance Laws
 - Consumer
 - Regulator
- Federal Laws
- Corporate Governance
- Whistleblower
- Third party contractors





Conclusion

“Insurance is an industry affected with the public interest.”

La R.S. 22:2

Most states recognize that fairness, integrity, and trust are integral parts of the Insurance industry.





Conclusion

“Without trust, insurance cannot perform its proper function as a risk management device for companies and individuals. No industry depends more on trust, and this trust comes from a series of events in which ethical values are demonstrated.”

Dr. Norman Baglini, former chairman and chief executive officer of the American Institute for CPCU, the Insurance Institute of America, and the Institute for Applied Ethics, 1998



Agents and Brokers Defined



Insurance Agents

- Definition:
 - Insurance agents solicit insurance transactions and help place risks on behalf of an insurance company
 - Deliver policies
 - Collect premiums
- Agents can bind the insurer to the extent of the agent's authority
- Agents are fiduciaries of the insurer

Independent Agents

- Independent agents represent several insurance companies
 - This poses difficulties in determining which business to send to each company
 - The independent agent may renew a policy with a different insurer if the policyholder approves
- The independent agent may be required to place a certain amount of business with each insurer
 - Creates further conflicts

Insurance Brokers

- Definition
 - Insurance brokers solicit insurance transactions as well, but work on behalf of a prospective insured
 - They legally represent insureds
- Brokers are often hired to obtain insurance for difficult to place risks

Excess/Surplus Lines Brokers

- Excess/Surplus Lines brokers are brokers that place excess or surplus lines insurance risks
 - These risks are often difficult to write
- These brokers must ensure that the insurers they work with are permitted to write excess lines policies in their jurisdiction
- The Nonadmitted and Reinsurance Reform Act (NRRA) simplified tax collection for excess brokers

Agents v. Brokers

- The difference between an agent and a broker can sometimes become blurred
 - Some brokers are also agents for an insurer
 - Some states issue the same type of license, a producer license, to both agents and brokers
- Simply put, a person is an agent when he or she acts on behalf of an insurer, and a person is a broker when he or she acts on behalf of an insured

Principals and Agents

- Under Agency Law principles, producers are agents of a principal – either the insurer or the insured
 - Insurance agents are agents of the insurer
 - Insurance brokers are agents of the insured
- The acts of the agent may be legally binding on the principal
 - May include mistakes and intentional misrepresentations

General Responsibilities



Licensing

- All states require that agents and brokers be licensed before transacting insurance
- The criteria to obtain a license varies from state to state
 - Most have continuing education requirements
- The purpose of licensing is to ensure that producers are knowledgeable and aware of the ethical issues they will face in doing business

Producer Responsibilities

- Agents are primarily responsible to the insurer
 - They must help the insurer place appropriate risks
- Brokers are primarily responsible to the insured
 - They must help the insured obtain coverage appropriate to the insured's needs
- All producers owe duties to the insurer, the policyholder, their profession, their licensing states, and to the public at large

Responsibilities to the Insurer

- Agents are fiduciaries of the insurer
- The legal relationship is established by the written contract, which both parties negotiate and sign
- Agents must diligently execute their duties, including:
 - Inspecting risks
 - Binding the insurer by agreement with the prospective insured
 - Collecting premium

Responsibilities to the Policyholder

- Brokers are fiduciaries of the policyholder
- Brokers should aid the insured by obtaining a policy that meets the needs of the insured
 - This means the broker must accurately identify the needs of his or her clients
- The duties of brokers include:
 - Confidentiality
 - Loyalty
 - Diligent undertaking of policy applications

Responsibilities to the Profession

- The temptation to use unfair tactics against competitors is strong
 - Misrepresenting the competence or integrity of other producers must be resisted
 - It is also dishonest for a producer to misrepresent his or her own experience
- Unfair tactics reflect poorly on the producer profession and the industry as a whole

Responsibilities to the State

- Both the federal and state governments regulate the insurance industry, but the states are the primary regulators
 - The federal government regulates areas such as anti-trust and labor
- Ethics and professional responsibility are regulated by the states
- There is variation between the states of the nuances of what is permitted
 - For example, some states use the term “marketing practices” and others use “unfair trade practices” to refer to aspects of producer ethics

Responsibilities to the Federal Government?

- The federal government has exerted increased influence on insurance regulation since the 2008 financial crisis
 - The 2010 Dodd-Frank Act established the Federal Insurance Office (“FIO”)
 - FIO monitors U.S. insurance regulation
- The National Association of Registered Agents and Brokers (“NARAB”) is an entity that would provide for multi-state producer licenses
 - Congress has yet to enact a statute creating NARAB

Responsibilities to the Public

- Producers' primary responsibility to the general public is the maintenance of a positive image of the insurance industry
 - Maintain professional integrity
 - Deal fairly and promptly with members of the public
 - Provide full and truthful information to prospective insureds
- Producers should maintain their integrity at all times
 - Negative stories are likely to be amplified as they circulate through the public in the news or by word of mouth, but positive stories are likely to be ignored

Responsibilities to the Insurer



Agency Law

- Principals appoint agents, who can legally bind the principal to contracts with third parties
 - The agent does not represent the third party
- To form an agency relationship, the principal and agent must agree to form such a relationship
 - Rights and obligations are usually defined in writing

Agency Law

- For insurance agents:
 - Principal = insurance company
 - Agent = insurance agent
 - Third party = prospective insured
- For insurance brokers:
 - Principal = prospective insured
 - Agent = insurance broker
 - Third party = insurance company

Agent Authority

- There are three types of agent authority:
 - Express authority
 - Implied authority
 - Apparent authority
- The type of authority effects the legal and ethical responsibilities of the producer

Express Authority

- Express authority: arises when the principal expressly grants certain authority to an agent
 - The grant may be made orally or in writing
- The agency contract should describe the actions that agents may take on behalf of the insurer

Implied Authority

- Implied authority: the authority the principal intends for the agent to have, but that was not expressly granted
- Based on the wording of the express grant (the contract) and the conduct of the parties
 - If the insurer knows that an agent has taken some action that is outside the scope of express authority, but takes no action to stop the agent, the agent has implied authority to take that type of action in future

Apparent Authority

- Apparent authority: arises from the reasonable assumptions of the third party dealing with the agent
- Based on the actions of the principal
 - May arise if an insurer negligently fails to stop an agent from advertising that he or she has authority to take some action that he or she does not possess

Fiduciary Duties

- Fiduciaries are those in a position of trust and responsibility towards a principal
 - Agents are thus fiduciaries of their insurer
- Agents owe a duty of loyalty to their insurer, and must:
 - Always act in the best interests of the insurer
 - Put the interests of the insurer before their own
- Examples:
 - Utmost care
 - Disclose all relevant facts
 - Due diligence
 - Premium Handling
 - Issue Binders

Utmost Care

- Agents owe a duty of utmost care to the insurer
 - They must competently and diligently handle all business they come by
- In some cases, an agent may not have the skills to competently address a matter
 - This means agents must refer the business to others who are more qualified

Full Disclosure

- Agents must fully disclose all pertinent information to the insurer
 - The agency contract will usually provide for disclosure of certain information
- This duty is most important during the application and claims-handling processes
 - Failure to fully disclose all information may lead the insurer to accept or decline a risk against its interests, or similarly settle or contest a claim
 - This can expose the insurer to liability

Due Diligence

- Agents must act promptly when necessary
 - Failure to timely act can harm the insurer
- Applications must be timely completed and delivered
 - Neither the insurer nor the prospective policyholder benefits from a delay in processing an application
- Once an application is taken, the agent has a duty to submit it to the insurer, even if the agent believes it will likely be rejected

Premium Handling

- There are two methods of paying the insurer for an insurance policy:
 - The insured directly pays premium to the insurer
 - The insured pays the agent or broker, who in turn forwards the premium to the insurer
- Producers must ensure that all laws are complied with when handling premium
 - Fidelity bonds

Binders

- Agents with binding authority may bind the insurer to a risk before approval of the application
 - Coverage is temporarily effective pending issuance of the policy
- Agents must carefully consider whether it is in the insurer's interest to issue a binder

Principal's Duties

- Principals owe certain duties to their agents:
 - Compensation
 - Employment
 - Indemnity
- Therefore, principals have an interest in employing agents who are diligent and loyal

Compensation

- Compensation is a major duty principals owe their agents
 - Each party owes duties to the other, but both also expect to profit from the relationship
- Compensation is usually in the form of commissions
 - May vary by line, and whether the policy is new business or a renewal
- Some insurers award lower commissions for renewals
 - This creates an incentive for producers to place that business with a different carrier rather than renew
 - The agent should only do what is in the interest of his or her principal

Employment

- Employment refers to contractual terms such as:
 - The length of the relationship
 - Types of business that may be placed
 - The insurer's expected premium
- Agents must satisfy the terms of the contract, or they will be in breach
 - The principal may then cancel the contract

Indemnity

- The principal must indemnify its agents for costs incurred from claims arising from the course of the agent's fulfilling his or her duties to the principal
 - This is part of the principal's agreement to be bound by the agent's actions
- However, the principal can recover costs from an agent that breaches his or her contract
 - Occurs when an agent breaches a duty

Reconciling Conflicts

- Producers may find it difficult to reconcile the competing interests of prospective insureds and insurers
- The best way to solve this problem is to act in the interest of the insurer
 - The insurer can best serve its customers if it is fully aware of all relevant facts when underwriting risks

Brokers as Agents

- Brokers are agents of their clients – prospective insureds
 - Thus, brokers owe duties primarily to clients
- However, brokers owe some duties to insurers, including:
 - Complete and accurate disclosure on insurance applications
 - Due diligence
 - Integrity

Responsibilities to the Client



Addressing Client Needs

- Addressing the needs of the prospective insured is the primary duty owed to clients
- A producer must do two things to adequately address the needs of a client:
 1. Possess the knowledge and skill to place the risk
 2. Educate the client regarding the insurance product and the contract

Knowledge and Skill

- Clients turn to producers because of their knowledge and skill
 - Producers must justify this reliance by maintaining a high level of knowledge of insurance products
- Producers must obtain the requisite knowledge and keep abreast of new developments in their field

Knowledge and Skill

- Ways to acquire and maintain knowledge:
 - Keep up with continuing education requirements
 - Attend industry conferences
 - Subscribe to insurance industry specific publications
 - Follow new developments
- Producers should study the products they sell and become well-acquainted with them

Knowledge and Skill

- Answer questions truthfully
 - This means that producers must sometimes admit that they do not know the answer to a question
- Refer clients to someone who is an expert for more information on certain topics
 - For example, if a client has questions of a legal nature, refer that client to a lawyer

Educating the Client

- Producers must explain all relevant aspects of the application to the producer, including:
 - What information is needed
 - Why the information is needed
 - The evaluation process
 - The meaning of important terms
 - What the policy will cover

Educating the Client

- Producers should explain the underwriting process to the client
 - This includes the nexus between risk, rates, and the insurer's expectation of a reasonable profit
- Producers should engage in "field underwriting" to screen out risks that an insurer will clearly reject
 - This saves time for both the client and the insurer
 - Accumulating a number of rejections from an insurer will also damage the producer's relationship with that company

Educating the Client

- Insurers often require additional information beyond that which is provided in the application
- Agents and brokers should advise the client of this possibility and render assistance as needed
- This can become complicated when a binder was issued
 - The client must be made aware that issuance of the binder does not guarantee coverage

Confidentiality

- Insurance producers necessarily obtain access to large amounts of a client's personal information
 - It would often be harmful to the client if this information was made public
- Producers must take appropriate measures to safeguard client information
 - Information should not be released without the client's permission

Confidentiality

- State and federal laws mandate that certain practices be observed to safeguard customers' personal information
 - Federal laws:
 - Fair Credit Reporting Act
 - Gramm Leach Bliley
 - The Health Insurance Portability and Accountability Act ("HIPAA")
 - These federal laws often mandate that the states adopt standards
- If personal information is lost or stolen, the entity must usually notify state authorities and affected individuals

Fair Credit Reporting Act

- The Fair Credit Reporting Act ("FCRA") is a federal statute that provides credit information protections for consumers
 - Prospective insureds are protected by the provisions of the FCRA
- Producers should inform prospective insureds that insurance companies may obtain their credit reports from credit rating agencies
 - Prospective insureds should also be made aware that they have a right to review information held by credit agencies, and demand that corrections be made to the information

Gramm Leach Bliley

- The Gramm Leach Bliley Act mandates that the states adopt laws to address disclosure of consumers' nonpublic personal information ("NPI")
 - NPI is an individual's personally identifiable information collected in connection with providing an insurance product or service, unless the information is publicly available
- These laws generally prohibit the disclosure of a consumer's NPI, unless certain requirements are met
 - The consumer may need to be notified before disclosure, and given the opportunity to opt out
 - Some disclosures, such as filings with regulators, are not subject to these requirements

HIPAA

- HIPAA provides guidelines for disclosure of patient health information
 - Applies to “covered entities”
- Nonpublic personal health information (“PHI”):
 - Identifies an individual who is the subject of the information; or
 - Reasonable basis to believe that the information could be used to identify an individual
- Health Information Technology for Economic and Clinical Health Act (“HITECH”)
 - Strengthens enforcement of HIPAA

Confidentiality v. Disclosure

- The producer's duty of confidentiality is made complicated by the fact that he or she must fully disclose to the insurer of all material facts concerning the client's application
- Thus, the producer must fully inform the client of all information that the insurer will consider
 - The client will then be better able to make decisions regarding coverage

Address Underwriting Delays

- It is the producer's duty to ensure that there are no delays in underwriting
 - The best way to prevent delays is to fully complete the application before submittal
- Producers should follow-up regularly and act to correct any errors or omissions in the application
 - The insurer should be advised of any updates to the application immediately

Personal Delivery of the Policy

- While many insurers mail the policy directly to the insured, producers sometimes have the opportunity to deliver it in person
 - Producers should take advantage of these opportunities as appropriate
- Delivering policies in person allows a producer to build stronger relationships with clients
 - The producer can also explain coverage to the client as a courtesy

Application Rejection

- Sometimes the insurer rejects or surcharges a policy
- When this occurs, the producer should review the rejection and determine what was the cause
 - Was there a mistake that can be corrected?
 - Was the rejection improper/illegal?
- The producer must immediately notify the client
 - The client may need to seek coverage elsewhere, and he or she may be harmed by delays in notification

Investigate the Insurer

- Brokers should ensure that the insurer that is issuing the policy is in adequate financial condition
 - Brokers should warn clients if an insurer may not be able to pay all of its obligations under some circumstances
- Credit rating agencies can be a useful tool in determining the financial strength of an insurer
 - However, rating agencies are not infallible
- Brokers should obtain errors and omissions (“E&O”) coverage to protect themselves and their clients against this pitfall

Fees

- Most states have laws specifying the amounts of money producers may collect in commissions and fees
 - Fees are often limited to the producer's expenses
- Some producers also charge fees for other services, such as risk management
 - Generally, these other services must be outside licensed activities
 - What is permissible varies by state

Risk Management

- Insurance is not the only way to hedge against losses
 - Risk management is a decision-making process meant to protect against loss
- Brokers can provide some risk management services to their clients
 - Helping the client understand the nature of the risk and all methods of reducing that risk will lead to better decisions when determining necessary coverage
- Producers must acquire the knowledge and skills necessary to adequately recommend some risk management solutions before offering this type of advice

Issues Facing Producers



Rebating

- Rebating is the practice of offering some valuable inducement in order to encourage a person to purchase insurance coverage
 - It may be a payment from the producer's commission, or other gift of something of value
- It is illegal in most states, and in some states it is a crime
 - Producers are usually barred from receiving a commission if they offer a rebate to a policyholder

Redlining

- Redlining is the practice of refusing to write homeowners or renters insurance based solely on the geographical location of the property
 - Redlining usually results in discrimination against people living in minority neighborhoods
- Redlining may also include other practices that have the effect of limiting access to insurance in these areas
 - Producers may be complicit in some of these practices, such as consistently failing to return calls to individuals in minority neighborhoods
- These practices are illegal under the federal Fair Housing Act

Commingling Funds

- Proper premium handling is part of a producer's fiduciary duties to an insurer
 - Part of this duty is the prohibition on commingling funds
- Producers cannot commingle premiums held for the insurer with other business or personal funds
- Premiums should be kept in a separate trust account

Guaranty Funds

- Guaranty funds partially compensate insureds for claims when an insurer becomes insolvent
 - Guaranty funds usually only cover admitted insurers
- Producers must ensure that the carriers they place business with are admitted, or explain the issue to the policyholder
- In some states, producers are liable for claims with unauthorized insurers

Twisting

- Twisting is the act of convincing a policyholder to drop one policy and buy a new one, with no real benefit to the policyholder
 - Some misrepresentation is usually involved to convince the policyholder to make the change
 - Unscrupulous agents may engage in this practice to earn a commission
- Twisting is illegal in most jurisdictions
 - It is a breach of the duty to fully disclose

Unfair Trade Practices

- Unfair trade practices refers to any acts that are deceptive or unfair with regards to the issuance of insurance policies, or the settlement of claims
 - Producers sometimes violate unfair trade practices acts when soliciting prospective policyholders or when explaining coverage
- The NAIC developed the Unfair Trade Practices Model Law, which has been substantially adopted in a majority of the states
 - The Model Law prohibits unfair trade practices

Unfair Trade Practices

- NAIC definition, in part:
 - Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:
 - Misrepresents the benefits, advantages, conditions or terms of any policy
 - Uses any name or title of any policy or class of policies misrepresenting the true nature thereof
 - Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy

Social Media

- Social media has become a major marketing technique for insurance entities
- Insurers will often be liable for social media content produced by their agents
 - This is due to the agency relationship
- Agents must take care that their social media content does not violate unfair trade practices or other laws
 - The agency contract should provide guidance for agents' use of social media on behalf of the insurer

Record Retention

- Most states require maintenance of records of advertisements disseminated to the public
- Maintenance of records of social media content is more complicated than maintenance of traditional advertisements (TV, radio, print, etc.)
 - It is unclear whether just an initial post must be retained, or whether the initial post and all responses must be retained
 - Users of social media may have to retain content posted by third parties

Nonadmitted and Reinsurance Reform Act

- The Nonadmitted and Reinsurance Reform Act (“NRRA”) is part of the Dodd-Frank Act
 - Part I of the NRRA streamlines collection of taxes for multi-state surplus lines business
- Previously, taxes were allocated between states based on risk
 - Producers had to calculate which states would collect certain taxes based on the risk present in each state
 - This created confusion because each state has a different tax collection regime
- The NRRA permits the “home state of the insured” to collect all taxes

Key Takeaways

- Producers should always maintain their integrity through following high ethical standards
 - It is the right thing to do, and failure to behave ethically can lead to legal liability
- Maintaining integrity helps producers in the long run
 - Insurers and clients seek out producers with good reputations

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