

Informational Letter No. 74
October 1990

TO: All Insurance Companies Licensed in West Virginia
and Other Interested Parties

RE: LIMITS OF DUTIES OF UNLICENSED PERSONS

Chapter 33, Article 1, Section 12 of the West Virginia Code defines insurance agent as an individual appointed by an insurer to solicit, negotiate, effect or countersign insurance contracts in its behalf. Article 12, Section 1 further states that "No person shall in West Virginia act as or hold himself out to be an agent... nor shall any person in any manner solicit, negotiate, make, or procure insurance covering subjects of insurance..., unless then licensed therefor pursuant to this article."

These sections of the West Virginia Code have produced a number of inquiries concerning the extent to which unlicensed persons, principally those employed by an insurance agency, may participate in the transaction of insurance matters, including sales and services.

In responding to such inquiries, it is appropriate first to point out the authority and responsibility of a person who is licensed as an insurance agent. Once that is done, the prohibitions against certain acts by the unlicensed persons, as well as the permitting of such acts by licensed insurance companies or agents, become clear.

When an insurance company is issued a license to transact business in the state, it is thereby authorized to solicit, negotiate, make or procure contracts of insurance. Insurance companies appoint individuals as agents to act for them in carrying out the functions. This appointment creates an agent-principal relationship in which an act by the agent, within the real or apparent scope of the agency, may be binding on the principal. This appointment is made a matter of public record by the company notifying the Office of the Insurance Commissioner of the appointment.

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In defining the authority of a licensed agent to solicit, negotiate, make, or procure contracts of insurance, it is helpful to look at the dictionary definition of these terms: (1) To "solicit" is to seek or try by persuasion; to ask, request, plead or invite. This term implies an attempt to urge a particular individual to do some particular things; for example, to purchase an insurance contract. (2) To "negotiate" is to bring about mutual agreement, to transact business, to communicate with another to arrive at the settlement of some matter; to discuss or arrange a sale. The term implies the discussion and settling of terms and conditions of a business transaction, for example, the terms, conditions, benefit amounts and rates of an insurance contract. (3) To "procure" is to obtain by any means; to acquire; gain; get; to effect; cause. The term implies the actual acquisition of an insurance contract.

The public interest is deeply involved in the competent and trustworthy transaction of insurance. The proper diagnosis of a clients exposure to risks and the recommendation of appropriate insurance to cover them are of paramount importance. Consequently, the insurance laws require that before individuals can be licensed as insurance agents, they must pass an examination demonstrating sufficient knowledge of the kinds of insurance they propose to transact. Once licensed, individuals remain licensed by conducting their insurance business in accordance with the insurance laws and proper business practices. In contrast with licensed persons, unlicensed persons have not established that they have both the required knowledge of insurance (by having passed the required examination) and the authority to solicit, negotiate, make or procure contracts of insurance (by having become licensed as insurance agents).

An unlicensed person can obviously discuss insurance matters in general. However, if such a general discussion develops into a "negotiation," the matter should be turned over to a properly licensed agent for handling to its conclusion. This does not prohibit a licensed agent using the services of an unlicensed person in a clerical capacity under the direct supervision of the agent, nor does it prohibit the unlicensed person receiving and passing on to the agent for his attention any insurance inquiries or request of a particular nature.

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For your guidance, attached are some examples of insurance activities in which an unlicensed person may or may not engage. It is difficult to specify all acts which can be done legally by a person who is not a licensed agent. Should there be any doubt as to whether an action should or should not be handled by an unlicensed person, the best advice is to ask the following question: "Does the contemplated action involve the areas of soliciting, negotiating or procuring a particular insurance transaction as those terms are described in these guidelines?"

If the answer is "yes", the matter should be handled by a licensed agent. If doubt still exists, the Office of the Insurance Commissioner should be contacted, in writing, for guidance. It is appropriate to add that the authority of a licensed agent extends only to the insurance company or companies which have notified the West Virginia Insurance Commissioner of their appointing him/her as their agent.

This information must be disseminated to all agents representing your organization and to all other parties responsible for licensing agents.

Verification, including a copy of the text of your communication, the date the information was mailed and the total number (not names) of individuals contacted, must be forwarded to the Agents Licensing & Education Division of this office no later than November 30, 1990.

Failure to comply may result in disciplinary action.

HANLEY C. CLARK
Insurance Commissioner

IN WEST VIRGINIA
AN UNLICENSED PERSON MAY NOT

1. Be compensated on a commission basis, i.e., contingent upon the specific sale of insurance or percentage of premium.
2. Solicit additional business when receiving payments for coverage.
3. Indicate that requested coverage is or will be bound or issued.
4. Explain or interpret coverage, analyze policies or give opinions or recommendations as to coverage.
5. Quote or estimate rates to a prospective (or present) insured.
6. Discuss terms of an insurance contract with a prospective (or present) insured.
7. Sign agents name to insurance documents.
8. Bind coverage (this includes accepting premium payments prior to the binding of coverage by a licensed agent).
9. Solicit insurance -- selling or attempting to sell insurance, evaluation and recommendation of coverages, analyzing exposures and inquire about additional coverage.
10. Discuss the effect of age, health or other risk-related conditions of the prospective policyholder.
11. Collect premiums in person at other than a recorded place of business.
12. Counsel, urge or advise any prospective purchaser to buy a particular policy or to insure with a particular company.
13. Initiate or solicit sales over the telephone.
14. Issue certificates of insurance, endorsements, binders, commitments, insurance policies or insurance identification cards.
15. In any manner, record information on an insurance application.

AN UNLICENSED PERSON MAY

1. Perform clerical functions.
2. Receive information relating to losses or adjustment of claims.
3. Call "cold" prospects to set up appointments for an agent to discuss insurance with them which may include obtaining policy expiration dates. No other discussion of insurance matters may take place.
4. Receive and receipt insurance premiums on existing policies only in the office and only as an incidental function.
5. Tell a policyholder what the office records reflect on existing coverage.
6. Receive telephone calls reporting additional or replacement items (vehicles, property, drivers) for policies currently in force.
7. Dispense brochures and other general information as long as they do not engage in conversation relating to the terms of a contract.
8. Obtain underwriting information from credit agencies, Department of Motor Vehicles, and other insurance agencies and companies.