



February 2019

WEST VIRGINIA INFORMATIONAL LETTER

NO. 202

**TO: All Insurance Companies Doing Business in the State of West Virginia, Insurance Trade Associations, and Other Interested Persons**

**Re: Permissible Duties of Unlicensed Customer Service Representatives of Agency Insurance Producers**

The purpose of this Informational Letter is to provide guidance on the permissible scope of activities an unlicensed officer or employee of a licensed business entity producer or individual insurance producer can perform without having to obtain an individual producer license pursuant to W. Va. Code § 33-12-3.

Many business entity producers (insurance agencies) and individual producers rely upon customer service representatives (CSRs) and other unlicensed employees to assist in their day-to-day operations. As a result, the West Virginia Offices of the Insurance Commissioner (OIC) routinely receives inquiries concerning what tasks unlicensed CSRs may engage in and what tasks may only be performed by a licensed individual insurance producer. Specifically, the questions generally concern what activities a CSR can undertake on behalf of an insurance agency without having to be licensed as an individual insurance producer.

The term “customer service representative” is not specifically defined in West Virginia insurance statute or rule, but generally refers to unlicensed employees or officers of an insurance agency. W. Va. Code § 33-12-2(f) defines “insurance producer” as a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Moreover, W. Va. Code § 33-12-3 provides the following:

- (a) A person may not sell, solicit or negotiate insurance covering subjects of insurance resident, located or to be performed in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.
- (b) No person shall in West Virginia act as or hold himself or herself out to be an individual insurance producer or insurance agency or solicitor unless then licensed therefor pursuant to this article.
- (c) No individual insurance producer, insurance agency or solicitor or any representative or employee thereof shall solicit or take application for, negotiate, procure or place for others any kind of insurance or receive or share, directly or indirectly, any commission or other valuable consideration arising from the sale, solicitation or negotiation of any insurance contract for which that person is not then licensed.



(d) No insurer shall accept any business from or pay any commission to any individual insurance producer who does not then hold an appointment as an individual insurance producer for such insurer pursuant to this article.

W. Va. Code § 33-12-4 sets forth exemptions to the above-stated licensure requirements, as follows:

(a) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries or affiliates.

(b) A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer: Provided, That the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(A) The officer, director or employee’s activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(B) The officer, director or employee’s function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state: Provided, That the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(6) An individual who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract: Provided, That individual is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

To the extent that the exemptions noted in W. Va. Code § 33-12-4 differ from the provisions in W. Va. Code § 33-12-3, the specific provisions in W. Va. Code § 33-12-3 will govern.

In general, insurance producers may delegate certain activities to their officers or employees, provided that the insurer or other principal does not prohibit or restrict the delegation, or an insurance law does not otherwise prohibit the activity. Subject to the above, in-office delegation is within the discretion of the agent or producer licensee, who must exercise reasonable judgment based upon considerations such as: (1) the nature and complexity of the task being delegated; (2) the education, training, experience and other personal qualifications of the officer or employee who will be performing the task; and (3) the type and extent of supervision and internal controls that will be in place.

Furthermore, an insurer may restrict or prohibit the delegation of certain activities or duties to non-licensees, notwithstanding the statutory exemptions. Thus, an insurer may establish a list of non-delegable or unauthorized activities with respect to such insurer, even if insurance law permits non-licensees to otherwise engage in such activities.

With regard to the authorized activities set forth below, such activities as specifically outlined would be acceptable, provided that, among other things, the employee is not compensated based upon sales and there is no discussion of coverage. Please note that CSRs and officers that engage in any delegated activity do so only on behalf, and in the name, of the agent or licensee via the authority so delegated by the agent or licensee. Thus, the agent or licensee must properly supervise CSRs and will be held strictly accountable for the activities of such CSRs. Accordingly, it is incumbent upon the agent or licensee to ensure that the CSR is adequately trained, trustworthy, and aware of the limits on his or her ability and authority.

**IN WEST VIRGINIA, AN UNLICENSED OR CSR PERSON MAY:**

- Answer phones
- Schedule appointments (provided there is no discussion about insurance coverage, cost or related issues)

- Make “cold calls” to individuals or businesses solely to set up appointments for a licensed agent or producer to discuss the potential procurement of insurance
- Maintain files and records
- Refer a prospective customer to a licensed agent or producer, where appropriate
- Conduct word processing and data entry
- Assist with advertising and mailing campaigns
- Accept payments on existing policies that are made in the office in situations where there are no coverage discussions
- Secure information from prospective customers regarding when the prospect’s current policy expires and the name of the carrier, and whether they would be interested in speaking with a licensed agent or producer
- Take loss information from customers and report this information to claims department
- Handle changes to existing policies that do not involve any discussion of coverages or require the binding of additional coverages, increasing or decreasing coverages, removal of coverages, or the addition of insured vehicles
- Receive requests for coverage to be transmitted to a licensed agent or producer

**IN WEST VIRGINIA, AN UNLICENSED PERSON OR CSR MAY NOT:**

- Prospect or solicit for insurance (although making appointments for licensed agents or producers is permissible)
- Solicit additional business when receiving payments for coverage
- Quote premiums or estimate rates to a prospective or current insured
- Discuss or provide advice concerning terms of coverages, limits or deductibles
- Explain or interpret coverage, analyze policies or give opinions or recommendations as to coverage
- Counsel, urge or advise any prospective purchaser to buy a particular policy or to insure with a particular insurer
- Interview customers for the purpose of developing information as part of the completion of an insurance application
- Discuss the effect of age, health or other risk-related conditions of the prospective policyholder
- Bind new policies or make changes to existing policies that require the binding of additional coverages, increasing or decreasing coverages, removal of coverages, or the addition of insured vehicles
- Indicate that requested coverage is or will be bound or issued



- Accept payments on new policies
- Accept payments on existing policies outside the office
- Receive compensation based on sales (*i.e.*, compensation is contingent upon the specific sale of insurance or percentage of premium)
- Record information on an insurance application in any manner
- Sign a producer's name to an insurance document
- Be involved in any activity or transaction that is not in compliance with company policies and procedures or that is in violation of state licensing or other laws

The above lists of authorized and unauthorized activities are for your guidance only and are not exhaustive of all possibilities or circumstances. Should there be any doubt, the best course of action is to ask the following question: "Does the contemplated action involve the areas of soliciting, negotiating, or selling a particular insurance product as those terms are defined in W. Va. Code § 33-12-2(m), (o) and (p)?" Those definitions are as follows:

(m) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract: Provided, That the individual engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(o) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(p) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

**For further information you may contact:**

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