



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

JOE MANCHIN III
Governor

JANE L. CLINE
Insurance Commissioner

DECEMBER 2005

WEST VIRGINIA INFORMATIONAL LETTER

NO. 155

TO: All Licensed Insurance Companies

RE: Appointment requirements for producers acting on behalf of an insurance company

The purpose of this Informational Letter is to clarify certain issues relating to the appointment by insurers of insurance producers who sell, solicit, or negotiate the insurer's products. It has recently become apparent to the Insurance Commissioner, following investigations and discussions with insurance companies and insurance agencies, that misunderstandings may exist among a small number of insurers about the need to appoint insurance producers who sell, solicit or negotiate an insurer's products, and the timing within which an appointment must be requested. This letter: (1) restates the current law regarding issues relating to producer appointments; and (2) provides more explicit guidance as to the particular activities that will determine whether a producer is acting as an agent on behalf of an insurer and, consequently, must be appointed by such insurer pursuant to West Virginia Code Section 33-12-18.

House Bill 4497, passed during the 2002 regular session of the West Virginia Legislature, eliminated broker licenses and introduced a single producer's license.¹ Since that time the Insurance Commissioner, as well as the great majority of insurance professionals in West Virginia, have continued to interpret the insurance licensing laws to require any producer who sells, solicits, negotiates or effects a contract of insurance offered by a specific company or companies to be duly appointed to act on behalf of such company or companies. Neither the provisions relating to appointments nor the interpretation of these provisions has changed. Therefore, any individual insurance producer who sells, solicits, or negotiates a specific insurer's product, or urges or asks clients to buy a specific insurance product from a specific insurer, needs to be appointed by such insurer.² The appointment is needed regardless of whether, during a sales

¹ Brokers' licenses had not been issued for several years prior to the 2002 amendments. A broker's license in West Virginia was a nonresident property and casualty license. West Virginia had prior to the 2002 amendments issued nonresident property and casualty licenses and ceased issuing broker licenses.

² It should be noted that W. Va. Code § 33-12-18(b) actually gives the appointing insurer a period of 15 days from the date the agency contract is executed or the first insurance application is submitted to file the notice of appointment with the Insurance Commissioner.

presentation, the product offered by the specific insurer was presented alone or as one of a number of products offered by different insurers.

Pursuant to statutory provisions contained in Article 12, Chapter 33 of the West Virginia Code³, an individual insurance producer must hold a direct appointment in writing by an insurance company in order to act on the company's behalf with regard to selling, soliciting, or negotiating insurance contracts. Because the authority of an agent may be implied from the conduct and words of the parties involved and from the circumstances attending a particular transaction, the performance of certain activities by an individual insurance producer indicates whether the producer is acting on behalf of an insurance company in a specific situation and therefore needs to hold a valid appointment. The following acts, if done by an individual insurance producer with the knowledge or consent of an insurance company, or if they are subsequently approved or ratified by the company, are considered by the Insurance Commissioner to be determinative as to whether an agency relationship has been established between the individual insurance producer and the insurance company:

1. Using an insurance company's brochures, letterhead, applications, or other company identifying material during a sales presentation or in circumstances relating to performance of professional services by the individual producer;
2. Representing to a prospective buyer of insurance that the individual insurance producer is acting on behalf of a certain insurer; or, in situations in which a reasonable person in the buyer's position would believe that the individual insurance producer is acting on behalf of a specific insurance company, failing to notify a prospective buyer that the individual insurance producer does not represent such company;
3. Presenting, discussing, recommending or explaining specific insurance products offered by a specific company;
4. Binding of coverage with a specific company or taking information for or completing an application for insurance with a specific company; or
5. Giving advice, counsel or recommendations about benefits, terms, features, conditions, exclusions or costs of any specific insurance product offered by a specific insurance company or companies to a prospective buyer during an initial sales presentation.

Any individual insurance producer who does any of the acts enumerated above is considered, and has been considered since the effective date of House Bill 4497, to be acting as an agent of the insurer and is required to hold a valid appointment from any and all of the insurance companies on whose behalf the individual insurance producer is either selling, soliciting, negotiating, marketing or effecting an insurance contract.

Additionally, the question has been raised as to whether an individual insurance producer employed by an insurance agency may act on behalf of an insurance company without holding a valid appointment, provided that the agency has a producer appointed to represent the company. Because the appointment requirement applies to all individuals or persons acting on behalf of an insurance company, it has always been the Insurance Commissioner's position that the producer must be appointed personally if engaged in any of the above enumerated activities, regardless of his or her affiliation with an agency.

³ W. Va. Code §§ 33-12-18 and 33-12-22 (2003 repl. vol.)

Finally, the Insurance Commissioner has encountered situations in which appointments submitted pursuant to W.Va. Code § 33-12-18 were determined to be invalid because of technical defects of the appointment request, and were resubmitted by the company after the lapse of a substantial amount of time. Please be advised that, where an individual insurance producer has already acted on behalf of a company with regard to the sale of any insurance product, and the appointment request is resubmitted to the Insurance Commissioner because of technical defects in the initial request, the submitting insurance company must cure the defect and resubmit a new request for appointment within a reasonable period of time, not to exceed thirty days from the date in which the written request for appointment was rejected by the Insurance Commissioner.

Any questions about this letter or any related matters should be directed to Jane Strother, Director of Agent Licensing, Office of the West Virginia Insurance Commissioner, at 304-558-0610, or at Jane.Strother@wvinsurance.gov.

ss://Jane L. Cline
Jane L. Cline
Insurance Commissioner