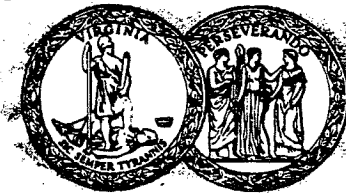


COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

LETTER

REPLACED

May 27, 1982

By Administrative
Letter 1997-1

Administrative Letter 1982-11

MEMORANDUM

TO: All Insurance Companies Licensed in Virginia and
All Agents' Associations

RE: Insurance Activities of Unlicensed Persons

Section 38.1-327.33 of the Code of Virginia provides, in part, that:

"No person shall act, and no insurance company or licensed agent shall knowingly permit a person to act, in this State as an agent of an insurance company licensed to transact insurance in this State without first obtaining a license in a manner and in a form prescribed by the Commission. No person shall submit business to any joint underwriting association or any plan established under this title for the equitable distribution of risks among insurers unless such person is the holder of a valid license to transact the kind of insurance involved." (Underlining added)

This excerpt from the State insurance laws (Code of Virginia) has 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 service.

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 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 this State it is thereby authorized to solicit, negotiate or effect contracts of insurance. Insurance companies, generally, appoint individuals, partnerships or corporations as agents to act for them in carrying out these 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 issuance of a license by the State for the agent at the request of the principal, the insurance company.

In defining the authority of a licensed agent to solicit, negotiate or effect contracts of insurance, it is helpful to look at how dictionaries define these terms:

- (i) To "solicit" is to seek or try by persuasion; to ask, request, plead or invite. The term implies an attempt to urge a particular individual to do some particular thing; for example, to purchase an insurance contract.
- (ii) To "negotiate" is to bring about mutual agreement, to transact business, to communicate with another so as 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, such as, for example, the terms, conditions, benefit amounts and rates of an insurance contract.
- (iii) To "effect" is to cause to come into being; to bring about; cause to occur; produce as a result; put in force; or, to go into operation. The term implies putting something in force or existence, such as, for example, the binding of an insurance contract.

The public interest is deeply involved in the competent and trustworthy transaction of insurance. The proper diagnosis of a client's 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 authority to solicit, negotiate or effect contracts of insurance (by having become licensed as insurance agents).

An unlicensed person can obviously discuss insurance matters in general, with regard to both coverages and rates. 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 requests of a particular nature.

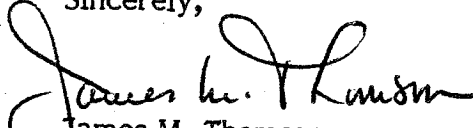
For your guidance, below are some examples of insurance activities in which an unlicensed person may or may not engage. It is difficult to specify all acts which can be done legally by a person who is not a licensed agent. Should there be any doubt as to whether an action should or should not be handled by an unlicensed person, the best advice is to ask the following question:

"Does the contemplated action involve the areas of soliciting, negotiating or effecting a particular insurance transaction as those terms are described in this letter?"

If the answer is "Yes", then the matter should be handled by a licensed agent. If doubt still exists, then the Bureau of Insurance should be contacted for guidance.

It is appropriate to add that the authority of a licensed agent extends only to the insurance company, or insurance companies, for which he holds a specific license issued by the Bureau of Insurance; or, in the case of a life and health agent for which he holds a general certificate of authority, or to the company for which he holds a temporary appointment, and which is in the process of requesting his license from the Bureau of Insurance.

Sincerely,


James M. Thomson
Commissioner of Insurance

JMT/WGF:dj

AN UNLICENSED PERSON

(Employed by an Insurance Agent, Agency or Company)

<u>May</u>	<u>May Not</u>
Assist with completion of applications	Counsel or advise what coverages to buy
Quote rates as general information	Urge or advise insuring with any particular company
Receive requests for coverage for transmittal to a licensed agent	Indicate that requested coverage is or will be bound or issued
Receive payments for coverage (receipt must show agent or company for which payment received)	Solicit additional business when receiving payment
Arrange appointments for a licensed agent	Solicit sales for agent over the phone or otherwise
Be remunerated on a "unit of time or work" basis	Be remunerated on a "commission basis", i.e., contingent upon the specific sale of insurance or percentage of premium

OTHER UNLICENSED PERSONS

No insurance company should accept or act upon any request for coverage submitted by a person purporting to be the producer of the request or application for coverage (other than a person seeking to buy coverage on himself or on property of his own or his employer) without first ascertaining that such person is the company's duly licensed agent. No insurance agent or agency should accept a request for such coverage without first ascertaining that such person is duly licensed in Virginia for the kind of insurance concerned. No insurance company should pay a commission other than to its duly licensed agents (except producers of residual market coverage) and no insurance agent should divide a commission with any person not duly licensed for the kind of insurance concerned.