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INTRODUCTION TO ETHICS

Whether you are a Life and Health Agent or a Property and Casualty Agent, the ethics you employ in your sales approach reflects not only on you but also the companies you represent.

Although some ethical issues are personal issues of conduct or level of integrity, other issues become violation of state laws.

In selling insurance it is critical that the highest standard of ethics be adhered to in making recommendations for products.

Are you properly outlining the risk factors involved in some choices the client may make?

Do you know enough about the products that you are marketing not to misrepresent to the consumer?

In this chapter we will be reviewing the ethical issues that face all agents in the conflict of earning a living versus serving the customer's needs.

At the core of ethical behavior is honesty, responsibility, care, integrity, and trustworthiness.

Codes of ethics developed by various professional associations serve as guides for the insurance professional who is committed to his/her responsibilities to both the insurance company he/she represents and the clients he/she serves.

STANDARDS AND PRACTICES

PERCEPTIONS OF ETHICS

- A. Ethics is "the discipline that deals with what is good and bad or right and wrong or with moral duty and obligation."
- B. Ethics can be approached from two levels:
 - 1. The philosophical level-dealing with the possibilities
 - 2. The practical level - dealing with the reality of every day experiences
- C. Ethics is a person's perceptions or convictions about what is right or wrong.
- D. Living by the Golden Rule is often the role model for sound religious ethics.
- E. Society, through laws and accepted behavior patterns, imposes guidelines on how to deal with other people.

From the practical side most agents have been tempted from time to time to either "stretch the truth" or perhaps "color" their presentation in order to obtain the sale. Although this may appear to have no short-range harm, will this coloration or untruth effect the client's future benefit? This consideration is critical in ethical behavior because it can result in future liability and/or lost clients for both you and the insurer.

A strong sense of honesty and personal integrity will enable an individual to stay on the straight and narrow and avoid deceiving either the customer or the insurer.

Overstating a product can be injurious to the insured and a deceptive statement on the application could result in a higher hazard for the insurer.

If you have a high standard of honesty and personal integrity, you may be unable to compromise them, even if your agency or client asks you to do so.

Honesty is the basics of ethics and relates to a person's integrity and truthfulness.

Society measures success by financial gain and many businesses, including the insurance industry, motivate their employees or independent contractors by the same theory. When achieving success and financial gain becomes primary over the customer's, client or employer's needs then, ethical issues may begin to arise.

Ethic and the law are not always synonymous. What is legal is not always ethical. In many cases professional organizations preceded laws and their code of ethics served as guides to establishing some of the laws to which we adhere. In this transformation not all ethical standards were codified into law.

Thus it is possible to operate within the law and yet be unethical. Selling someone a casualty policy they do not need might be legal, but not necessarily ethical.

Often times, things that are unethical but legal today, may become illegal tomorrow due to public pressure to bring about reform.

For this reason ethical behavior should supercede the lack of a law of statute.

ETHICS FOR THE PROPERTY & CASUALTY AGENT

An insurance agent is anyone who solicits insurance or who aids in the placing of risks, delivery of policies or collection of premiums on behalf of an insurance company.

In most states agents are considered representatives of the insurance company and not of the insured. An agent is regarded as a fiduciary, a position of special trust in handling the affairs or funds of another

There are four areas of ethical responsibility for an insurance agent:

Responsibilities to the agent's insurer

Are covered under the concept of agency. The agent owes his or her insurer the duties of good faith, honesty and loyalty. The

agent's day-to-day activities are a direct reflection of the insurer's "image" within the community.

Responsibilities to policy owners

Require the agent to meet the needs of the client, provide quality service, maintain loyalty, confidentiality, timely submission of applications and prompt policy delivery.

Responsibilities to the public

Require the agent to maintain the highest level of professional conduct and integrity in all public contact in order to maintain a strong positive image of the industry.

Responsibilities to the state

Require the agent to adhere to the ethical standards mandated by his or her state.

Under the ethical responsibilities owed to the insurer the agent has an obligation to reveal all material facts concerning the insured or any other matter relating to the agency relationship.

ETHICS AS THEY APPLY TO INSURANCE BROKERS

A broker's primary responsibility is to his or her client, meaning that, the broker is charged with the responsibility of finding the appropriate insurance coverage and markets to meet a client's needs.

A broker legally represents the insured.

Many brokers provide sources of specialized insurance products and with this provide their clients with their expertise and knowledge of such products.

It is critical that an insurance broker realize that their fiduciary responsibility to the insured dictates that they work in the best interest of the insured.

Their ethical standards should reflect this obligation and put the client's needs ahead of any financial gain they might realize by selling one product over another.

An individual who is strictly a broker does not have binding power and coverage is not effective until the insurance company receives the application and accepts the risk.

Dual Agency exists when a broker is both a broker and an agent in which case he is functioning both on behalf of the insured and the insurer.

Some states today do not issue a broker and separate agent license, but simply issue an insurance producer license.

Brokers are held to the same standards of care as agents in terms of their responsibilities to the general public and the state.

Brokers primary responsibilities are to their clients by finding the appropriate insurance coverage to meet their client's needs.

CHARACTERISTICS OF A PROFESSIONAL

The word "profession" means an open or public declaration, but has come to mean any calling requiring academic training and specialized knowledge.

Insurance agents and real estate agents are considered professionals because their business meets the following six commonly accepted characteristics of a profession:

- Commitment to high ethical standards
- Concern for the welfare of others
- Mandatory licensing and training
- Formal participation in an association or society
- Acting with integrity and objectivity
- Public acknowledgement as a profession

High ethical standards must be maintained at all times in order to serve the general public, our clients and principal.

Commitment to high professional standards often comes in conjunction with membership to professional associations that demand these high standards from their membership.

Concern for the welfare of others is a personal ethics issue that often times is inbred in ones upbringing and is then later required as part of ones profession. The fiduciary

responsibility entrusted to every insurance producer demands that the welfare of the client is put ahead of his or her own need.

Mandatory licensing is required by virtually all states and continuing education has become a core requirement to update the producer on changes occurring within the law and the industry.

Membership in formal associations further enhances professionalism and ethical behavior by providing a forum for additional exchange of information and knowledge.

FOCUS POINTS

1. An agent's sales approach reflects not only on themselves but also the companies he or she represents.
2. Some ethical issues are a matter of personal conduct and some are violations of state law.
3. At the core of ethical behavior is honesty, responsibility, care, integrity, and trustworthiness.
4. Codes of ethics developed by various professional associations serve as guides for the insurance professional.
5. Ethics is the discipline that deals with what is good and bad or right and wrong or with moral duty and obligation.
6. Society through laws and accepted behavior patterns, impose guidelines on how to deal with other people.
7. Honesty is the basics of ethics and relates to a person's integrity and truthfulness.
8. When achieving success and financial gain becomes primary over the needs of insured or insurer, ethical issues may begin to arise.
9. Ethics and the law are not always synonymous.
10. What is legal is not always ethical.
11. Professional organizations preceded license laws and their code of ethics served as guides to establishing some of the laws.
12. It is possible to operate within the law and still be unethical.
13. In most states agents are considered representatives of the insurer and not of the insured.
14. The four areas of ethical responsibility for an agent are to the insurer, the insured, to the public, and to the state.
15. A broker differs from an agent in that his or her primary responsibility is to the insured.
16. A broker's fiduciary responsibility to the insured dictates that they work in the best interest of the client.
17. A client's needs must be put ahead of the broker's commission.

18. Dual agency exists when a producer is both a broker and agent.
19. Some states do not issue agent's or broker's licenses but simply issue an insurance producer's license.
20. A broker's primary responsibility is to find the appropriate insurance coverage to meet their client's need.
21. The word "profession" means any calling requiring academic training and specialized knowledge.
22. Commitment to high professional standards often comes in conjunction with membership to a professional association.
23. Mandatory licensing of insurance producers is virtually required by every state.
24. Most states mandate continuing education for insurance producers and other professions.
25. Memberships in professional associations provide a forum of additional exchange of information and knowledge.

FOOD FOR THOUGHT

To better understand the issues discussed take a few minutes to think about or perhaps on a separate piece of paper outline your perceptions of the following thought provoking issues.

- How can an agent's sales approach effect the company he or she represents?
- How does the philosophical side differ from the practical side when dealing with ethics?
- How can an insurance agent maintain a high level of ethical conduct in the face of competition from within his or her agency and from agents of other insurance companies?
- Think of three examples that are legal CONDUCT but not ethical conduct.
- Name three responsibilities that an agent has to the insurer.
- Name six responsibilities an agent has to the insured.

- Name three responsibilities owed by an agent to the general public.
- What responsibilities does an agent have to the state ?
- How does a broker differ from an agent in fiduciary responsibility?
- When does Dual agency exist?
- What is a broker's primary responsibility in dealing with his or her clients?
- How do the ethical responsibilities to an agents' policyholders differ from his or her ethical responsibilities to the public?
- Name six characteristics of a profession.
- What does the fiduciary responsibility entrusted to every insurance producer demand?
- Think of three examples how by being a member of a professional organization an insurance producer adds value to his or her clients.

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FIDUCIARY RESPONSIBILITY

Fiduciary responsibility in many professions is harnessed under a concept called agency.

Many times both insurance agents and brokers and real estate agents and brokers do not realize that even-though they are involved in the sale of a product, they are not merely sales representatives working to fulfill there own needs, but are fiduciaries of their "principals".

This high level of performance makes them ethically and legally accountable to their principals and legally accountable to the state and federal licensing bodies.

This accountability is outlined under a concept called agency.

The two fundamental principals of an agency relationship are power and authority.

THE CONCEPT OF AGENCY

Agency is a legal term used to describe the relationship between two parties, in which the *principal* authorizes the *agent-to* perform certain legally binding acts on the principal's behalf.

The main components of an agency relationship are:

1. An agent is an agent of the principal (the insurance company) , not the third party with whom the agent deals (the insured).
2. An agent has the power to bind the principal to a legal contract and its terms.
3. The acts of the agent, within the scope of authority, are the acts of the principal.

Because legally the acts of the agent are the acts of the principal, it is critical that the agent does not misrepresent the principal in any manner or fashion, and that, the third party understands that the agent is working to the best interest of his or her principal.

While serving the principal, the agent also has a responsibility to the third party to be honest and forthright in presenting the products up for discussion.

Because agency can be created in several ways, it is important that an agent does not create an agency relationship that becomes a conflict of interest without proper disclosures.

The methods an Agency can be created are:

1. Appointment or Explicit contract.
2. Estoppel
3. Ratification

Appointment or Explicit contract

is an agreement between the principal (insurer) and the agent, that specifically outlines the duties the agent may perform on behalf of his or her principal.

Estoppel

is the principal wherein the insurer allows someone (an agent) to act in a way that would cause an innocent third party to believe that the individual was an agent of the principal, than that agent actually becomes an agent of the principal and the principal is held accountable for his or her actions.

In order for estoppel to occur three elements must come into play:

1. The principal must act in some way that gives the appearance that an agency relationship exists.

2. An innocent third party must be misled.
3. An innocent third party must be harmed.

Agency by Ratification

is the last method in which an agency relationship can exist. In this format agency is initially created by misrepresenting that an agency relationship exists, but later on, the "authority" is legitimized by the principal through acceptance of the representation and its actions.

Before an individual can act as an agent he or she must have the *power* and *authority* to take action. There are three types of agency authority:

1. **Expressed authority** is the authority the principal intentionally and expressly gives the agent.
2. **Implied authority** is the authority that the principal intends for the agent to have, but does not expressly given.
3. **Apparent authority** arises when a principal permits an agent to perform acts neither expressly or implicitly authorized.

In the case of **Expressed Authority** the limits to an insurance agent's authority are usually defined in his or her agency agreement and the agent must work within those perimeters.

Implied Authority permits an agent to perform incidental actions that go along with the authority vested by virtue of the **Expressed Authority**.

Apparent Authority is created when a third party relies on the acts of an agent, which have not been authorized, but through negligence are permitted by the principal. Apparent Authority hold the principal responsible for the agent's acts.

The ethical significance of these limits to an insurance agent's authority is that an agent must serve the needs of the insurer, live up to the contract and operate within the scope of his or her authority. By entering into this contractual relationship with the insurer, the agent becomes a fiduciary of the insurer.

THE AGENT AS A FIDUCIARY

An individual whose position and responsibilities involve a high degree of trust and confidence is known as a fiduciary. An insurance producer has a fiduciary relationship with his or her insurer with regard to the following:

1. **Loyalty to the insurer**-A producer must at all times act in the insurer's best interest, not his or her interests of personal gain.
2. **Skill and performance**-An agent has the duty to carry out his or her actions with care and skill. Because an agent represents the company to the public and the agent must act in such a manner as not to create a tarnished image for the company.
3. **Full disclosure**-An agent is obligated to fully disclose all information he or she has that may affect the insurer and the ability to do business. Full disclosure is critical during the application and claims handling processes.
4. **Follow up**-An agent has the obligation to act promptly in all matters regarding the insurer's business, including the duties to forward completed applications as quickly as possible.
5. **Handling of premiums**-By law, payment to an agent is payment to the insurer. The agent has a fiduciary duty to turn over all funds given to him or her as specified in the agency agreement.
6. **Avoiding conflicts of interest**-An insurance agent cannot serve two principals at the same time. An agent has the ethical duty to make full disclosure to an insurer in regard to any other related service he or she provides and receives compensation.
 - A. Responsible solicitation-An agent has the duty to solicit only business that appears to be good and profitable to his employer.
 - B. Competitive integrity-An agent cannot misrepresent or in any way defame a competitive agent or insurer. An agent must compete only on the basis of products and services he or she can provide.

3

CAPTIVE AGENT VS INDEPENDENT AGENT

CAPTIVE AGENTS

Captive Agents have different ethical responsibilities than Independent Agents.

Captive Agents are agents for the insurer and by virtue of an exclusive contract owe all of their allegiances exclusively to the individual insurer or group of insurers.

All accounts belong to the insurer. Should an agent terminate their contractual employment agreement with the insurer, such accounts would remain under the control and ownership of the insurer.

A captive agent owes all of her or his allegiances to the insurer and must notify the insurer of any other sources of contractual or employment revenue the agent may have. Such sources would be reviewed for potential conflict of interest to the insurer.

The legal and ethical responsibility lie entirely with loyalty to the insurer and any attempt to sell a competitor's product would be a violation of both ethics and possibly the law.

INDEPENDENT AGENTS

Independent Agents are independent businessmen who typically represent a number of companies and are compensated on a commission basis. The insurance client belongs to the agent and is controlled by the agent upon an agent's termination of a business relationship with an insurer.

An independent agent can switch a client to another insurer with the client's permission, as long as, the client is not harmed by the switch.

Ethical issues arise when the agent does not "shop" the policy for the client in order to obtain the best price or terms for the client.

Because an independent agent is "quota" and "commission" driven much temptation in the area of ethics confront him and her on an everyday basis.

Although the agent represents the insurer, every attempt must be made to serve the client in an ethical manner.

The agent must comply with the guidelines of **Dual Agency** to avoid possible conflict. The rules of Dual Agency require, that an independent agent represent the client during the process of helping the client select the insurance plan best suited the client's needs, and represent the insurer in the application process, underwriting, record-keeping, and claims settlement processes.

The principal is responsible for the acts of its agents and owes the agent three duties:

1. Payment of compensation in the form of commissions or fees
2. Employment in return for meeting production responsibilities.
3. Indemnification or reimbursement for damages or expenses incurred in defending claims for which the agent may be liable.

Legally, a *broker* acts as an agent and representative of the applicant. However, when an insurer gives a policy for delivery to an insured, the broker becomes the agent for the insurer. Should payment of a premium be involved, payment to the broker is considered payment to the insurer.

Although, the broker technically represents the client, the ethical and fiduciary standards that apply to an agent, also apply to a broker.

Employing sound ethics principles permits producers to serve both the insurer and client may consider serving both the insurer and the client without creating a conflict of interest.

FOCUS POINTS

1. An agency relationship creates a fiduciary responsibility.
2. Fiduciaries are ethically and legally responsible to their principals.
3. Two fundamental principals of an agency relationship are power and authority.
4. When a principal authorizes an agent to perform certain legally binding acts on the principal's behalf, an agency relationship is established.
5. An agent is an agent of the principal not the third party.
6. An agent has the power to bind the principal to a legal contract.
7. The acts of the agent are the acts of the principal.
8. While serving the principal, the agent has a responsibility to the third party.
9. Agency can be created by contract, estoppel, or ratification.
10. The three types of agency authority are expressed, implied, and apparent.
11. An individual whose position and responsibilities involve a high degree of trust and confidence is known as a fiduciary.
12. An insurance producer has a fiduciary responsibility to the insurer in regard to loyalty, skill and performance, full disclosure, follow-up, handling of premiums, avoiding conflict of interest, responsible solicitation, and competitive integrity.
13. Captive agents have different ethical responsibilities than independent agents.
14. In the concept of captive agent all accounts belong to the insurer.
15. A captive agent's legal and ethical responsibility to loyalty rest entirely with the insurer.
16. In the case of an independent agent the client belongs and is within the control of the agent.
17. An independent agent must comply with the guidelines of Dual Agency to avoid possible conflict.
18. In the selection of the right product a dual agent must represent the interest of the client.

19. A dual agent represents the insurer in the application and underwriting process.

FOOD FOR THOUGHT

To better understand the issues discussed take a few minutes to think about or perhaps on a separate piece of paper outline your perceptions of the following thought provoking issues.

- What type of responsibility is created under an agency relationship ?
- Name the two fundamental principals of an agency relationship.
- What is the role of the principal in an agency relationship?
- Name the three main components of an agency relationship.
- Because legally the acts of the agent are the acts of the principal, what can happen if an agent misrepresents the principal?
- Name two responsibilities an agent has to a third party.
- Name the three methods which can create an agency relationship?
- What three elements must come into play to create an agency by estoppel?
- What are the three types of agency authority ?
- Name the eight fiduciary responsibilities an agent has to the insurer.
- To whom does a captive agent owe all of his or her loyalty?
- Who does an independent agent represent and what ethical issues can arise?
- What do the rules of Dual Agency dictate in order to avoid conflict of interest?
- What three duties does a principal owe an agent?
- When does a broker act as an agent for the insured and under what circumstances does a broker act as an agent for the insured?

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RESPONSIBILITIES TO CONSUMERS & CLIENTS

PROVIDING APPROPRIATE PRODUCTS

Agents fulfill their ethical responsibilities to their insurers' by providing the appropriate Products to meet their consumers needs, as well as, quality service. Making sure that the consumer understands both the products and underwriting process is a critical responsibility of the agent.

The area of property casualty insurance covers fire insurance, marine insurance, casualty insurance, and multiple-line insurance. Fidelity and surety bonds also come under this category.

The umbrella insurance policy is used in this line of insurance to extend limits or expand coverage over the basic insurance policy.

Agents in the property casualty field are usually limited agents or general agents.

A general agent can usually bind for the companies they represent, whereas a limited agent has reduced authority and usually cannot bind policies.

Selling to the needs of the client is critical in maintaining integrity and ethical behavior.

The insurance agent can serve the needs of the prospect by providing the prospect with the types of policies that best fit his or her needs, in the amounts he or she can afford. In order to accomplish these goals, the agent should:

1. Obtain the required knowledge and skills to accomplish the needed objectives.
2. Constantly update this knowledge and skill through continuing education.
3. Educate the prospect or policy owner about the products and plans being recommended by the agent.

In servicing the client, the agent should make the client aware of possible shortcomings of the basic policy and let the client know of the possible need for umbrella insurance.

Additionally, the agent should be committed to, not only selling the product, but to quality service both before, during and after the sale.

This means:

1. Educating the prospect about insurance products and the underwriting process;
2. Treating all information obtained with confidentiality;
3. Disclosing all necessary information so that both the insurer and the prospect can make an informed decision.
4. Keeping the prospect informed through out his application.
5. Showing loyalty to prospects, clients and insurer

SERVICE BEGINS WITH THE APPLICATION.

1. It is the agent's duty to see to it that the application is completed both accurately and completely.
2. To properly explain why required information is necessary.
3. How the information will be evaluated by the underwriter.
4. That accuracy and honesty are imperative in the application.

5. A prospect should be informed that failure to disclose information could result in denial of claims or policy cancellation.

It should be explained that a *binder* provides temporary protection while the policy is being underwritten and is not a guarantee that the policy will be issued.

The agent or broker is responsible for service before and after the sale, which includes:

1. Maintaining accurate client records.
2. Maintaining complete and accurate records of all business transactions.
3. Knowledge of new coverage and products.
4. Availability and changes in products offered in the marketplace.
5. Assistance with claims processing.
6. Reviewing clients' existing policies.

Suggestions on updating coverage on existing policies.

Ethically an agent or broker must respect the confidential information provided by the client and must assist the client in the following areas:

1. Selecting the most appropriate policy;
2. Understanding the basic features of the policy; and
3. Evaluating the costs and features of similar plans.

Ethical standards must be used in evaluating risk management.

Risk management is the process of decision making that protects assets and income against accidental or unintended loss by identifying, measuring, controlling and treating the elements that contribute to the risk.

RISK MANAGEMENT

Two basic risk management rules are:

1. The size of the potential loss must be within the scope of the resources available to the insurer.
2. The possible benefit must exceed the costs of the potential loss.

The risk manager, agent or broker should:

1. Identify and measure the loss exposures and hazard.
2. Determine the amount of money available to pay for the potential loss; and
3. Identify various risk management techniques to deal with potential losses.

RISK MANAGEMENT TECHNIQUES

Risk management techniques include:

1. **Avoidance**-averting a loss by refusing to take part in something that could cause a loss.
2. **Transfer**- shifting risk to another entity through a contract or hold-harmless agreement;
3. **Loss control**-reducing the frequency or probability of loss through loss prevention or lowering the severity of loss through loss reduction.
4. **Retention**-holding part of the risk through deductibles or all of the risk through self-insurance.
5. **Insurance**-transferring risk to an insurance company.

FOCUS POINTS

1. Making sure that the consumer understands both the products and underwriting process is a critical responsibility of the agent.
2. The umbrella insurance policy is used to extend limits or expand coverage.
3. Agents in the property casualty field are either general agents or limited agents.
4. Selling to the needs of the client is critical in maintaining integrity and ethical behavior.
5. An agent can best serve clients by being skillful and knowledgeable about his or her product line.
6. In servicing clients an agent should make them aware of shortcomings of a policy and possible remedies.
7. Agents should be committed to quality service before, during and after the sale.
8. Agents should treat all client information with confidentiality.
9. Agents should show loyalty to clients and the insurer.
10. A prospect should be informed that failure to disclose could result in denial of claim or policy cancellation.
11. A binder provides temporary protection and is not a guarantee that a policy will be issued.
12. It is the agent's duty to see that the application is completed accurately and completely.
13. Ethical standards must be used in evaluating risk management.
14. A risk management technique is to transfer the risk to an insurance company.

FOOD FOR THOUGHT

To better understand the issues discussed take a few minutes to think about or perhaps on a separate piece of paper outline your perceptions of the following thought provoking issues.

- Name three ways an agent can fulfill their ethical responsibilities to their insurer.

- Name five categories of insurance that come under the heading of property and casualty.
- What is the purpose of umbrella coverage?
- Name one difference in the powers of a limited agent versus a general agent.
- Name three things an agent can do to serve the needs of his or her clients.
- Name five things an agent can do to serve his or her clients before, during, and after the sale.
- Name two duties an agent has in preparing the application.
- Name the two things that can happen if an applicant fails to disclose information on the application.
- What is the purpose of a binder and what does it not guarantee?
- Name six things an agent or broker should do after the sale to properly serve his or her clients.
- What is meant by the term "risk-management"?
- Name two basic risk management rules.
- Name three responsibilities of a risk manager, agent or broker.
- Name five risk management techniques.

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RESPONSIBILITIES TO THE GENERAL PUBLIC

FAIR AND HONEST INFORMATION

Because unethical behavior by agents and brokers can effect the whole industry, the integrity and professionalism of their conduct is of utmost concern to all.

The public's perception of the insurance industry is gagged by the behavior of both insurance agents and brokers and their commitment to professionalism is the key to the public's trust of the industry.

Insurance is something that is used by many, but yet, many are unaware of how insurance works and benefits them.

The ethical agent has a duty to provide the consumer with fair and honest information of the policies and services he or she has to offer.

STATE AND FEDERAL REGULATIONS

The Insurance Industry is regulated by both the state and federal governments with the state departments of insurance issuing rules and regulations, licensing insurers, agents and brokers, suggesting laws to legislators, examining insurers' financial operations, approving policy forms and overseeing marketing practices.

The federal government is responsible for programs to cover things that commercial insurers are unable or unwilling to provide insurance. Such programs include flood insurance, Fair plans, federal crime insurance and crop insurance.

Each state has its own Department of Insurance or regulatory authority. This authority normally oversees the licensing of insurers, brokers and agents; issues rules and regulations; examines insurance company and educational providers records; approves forms and rates; and oversees the marketing of insurance products.

ORGANIZATIONAL CODES OF ETHICS

So that agents and brokers can provide accurate and knowledgeable information to the consumer, many industry organizations exist that provide guidelines and information to their memberships.

Such organizations include the Insurance Institute of America, and the American Institute for Property and Liability Underwriters.

A code of ethics is employed by the industry to guide corporations, agents and brokers. These Codes emphasize a high level of professional competence and service to the general public. One of the most prominent of these codes is the Independent Insurance Agent's Code of Ethics.

Insurance producers continuously face complex issues dealing with skill, competence, and levels of knowledge required of professionals.

RATINGS

Ethical pressures have brought down a review of ratings by sex and have fostered a unisex rating system for both casualty and life and health products.

REBATING

Much controversy exists around the subject of rebating to the consumer by either the agent, broker, or insurer.

Both ethical and legal issues surround this very controversial topic.

Some states strictly prohibit rebating, while others have set up guidelines that must be followed if rebates are to occur.

Where it is permitted some of the following guidelines serve as perimeters:

1. The rebate has to be available to all insureds in the same actuarial class.
2. The rebate must be in accordance with a rebating schedule filed by the agent with the insurer issuing the policy.
3. The rebating schedule **MUST** be uniformly applied so that all insureds who purchase the same policy through that agent for the same amount of insurance receive the same rebate percentage.
4. Rebates shall not be given to an insured that purchases a policy from an insurer that prohibits its agents from rebating commissions.
5. The rebate schedule is prominently displayed in public view at the agent's place of business and a free copy is available to insureds on request.
6. The age, sex, place of residence, race, nationality, ethnic origin, marital status, occupation or the location of the risk is not used in determining the percentage of the rebate or whether a rebate will be available.

Although these guidelines are not universal, they are presented here as examples of what might be expected in a rebating situation and are currently being used in some parts of the country in states that permit rebating.

REDLINING

Ethical standards and law forbid the practice of redlining. Redlining is the process of excluding certain geographic areas from insurance coverage strictly on the basis of location. The Fair Housing Act forbids this practice in any form.

Professional conduct often dictates that the client's needs be put ahead of the agent's needs, be dedicated to the insurance industry and offer quality plans from quality insurance companies. The agent should develop high ethical standards, adhere to integrity and serve the interests of the client.

The public's perception of the activities of an individual agent or broker shapes the perception of the industry as a whole. Skill, competence, professionalism and moral integrity shape public perceptions.

FOCUS POINTS

1. The public's perceptions of the insurance industry is gagged by the behavior of agents and brokers.

2. Professionalism is the key to the public's trust of the industry.
3. The insurance industry is regulated by both the state and federal government.
4. The federal government is responsible for programs not covered by commercial insurers.
5. State insurance regulators are responsible for licensing and monitoring of the insurance industry.
6. Many industry organizations exist that provide guidelines and information industry professionals.
7. A code of ethics is employed by the industry to guide corporations, agents and brokers.
8. Insurance producers continuously face complex issues dealing with skill, competence and knowledge.
9. Rebating is a controversial practice frowned upon by most states.
10. States permitting rebates have set up guidelines governing the practice.
11. Redlining is the process of excluding insurance coverage for certain neighborhoods strictly on the basis of geographies.
12. The Fair Housing Act forbids redlining.

FOOD FOR THOUGHT

To better understand the issues discussed take a few minutes to think about or perhaps on a separate piece of paper outline your perceptions of the following thought provoking issues.

- What key commitment must agents and brokers make to create a good perception of the industry?
- Name the role of State Regulatory bodies in monitoring the insurance industry.
- Name one of the functions the federal government performs in relation to the insurance industry.
- Name three insurance programs administered by the federal government.

- How do industry organizations aid the agent, broker and consumer?
- Name two prominent industry organizations.
- What part do ethical codes play in establishing professionalism in the industry?
- What issues arise when a rating system uses gender as a guideline to rating?
- Reflect on three things that might be considered unethical in a rebate situation.
- List three reasons in favor of rebating that are within ethical standards.
- Where permitted, with whom must a rebating schedule be filed?
- Where must a rebate schedule be displayed in order to conform with guidelines.
- What nine considerations cannot be part of conditions for a rebate?
- Name the process that causes redlining.
- What "Act" forbids the practice of redlining ?

6

THE ENFORCEMENT OF ETHICS & THE LAW

MC CARRON-FERGUSON ACT

Each state regulates the ethical conduct of insurance producers by creating rules, regulations and legislation to protect the consumer.

In 1945 the U.S. Congress enacted Public Law 15, better known as the McCarran-Ferguson Act which clarified the roles of state and federal government in the regulation of the insurance industry.

The "Act" gave the federal government the authority to regulate insurance in the area of fair labor practices and antitrust. The states were left with the power of all other regulatory matters.

States through an Insurance Commissioner or Director oversee the marketing activities of agents and regulates the Insurance industry.

State insurance Commissioners or Directors are voluntary members of the NAIC. a national organization created to bring uniformity and communication amongst states on important insurance issues and regulations.

NAIC

The National Association of Insurance Commissioners (NAIC) proposes model legislation to encourage uniformity in state insurance laws and regulations; assist officials in

administering laws and regulations, help protect the interest of policy owners; and preserve state regulation of insurance.

Most states have laws that protect consumers against unfair trade practices such as: misrepresentation and/or false advertising, coercion, improper placement, or rebating.

The NAIC has created guidelines that serve as a model in most states in regulating advertising of products and services.

1. All insurance advertisement must be truthful and not misleading in fact or implication. Words or phrases that are clear only through familiarity with insurance terminology cannot be used.
2. All information required to be disclosed (i.e., exceptions, limitations of benefits and exclusions from coverage) must be printed conspicuously next to the statements to which the information relates and displayed in such prominence that it is not minimized, confusing or misleading.
3. Deceptive words, phrases or illustrations may not be used to describe a policy, its benefits, the losses to be covered or premiums payable.
4. Testimonials must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced.
5. Disparaging remarks or statements about another insurer, agency or agent of another insure, their products and services may not be used in any advertisement.
6. The identity of the insurer must be clear in all advertisements, as well as the name, address and phone number of the agent placing the advertisement.

Violations can result in fines, license suspension and revocation.

Because both agents and brokers are fiduciaries, client funds handled by these individuals must be segregated and held in PFTA (Premium Trust Fund Accounts) until properly delivered to the insurer.

The deposit into this account must be made with direction from the insurer and although a separate account is not required for each insurer, proper bookkeeping segregating one transaction from another must be maintained for audit.

An agent or broker cannot mix trust funds from the PFTA account with business or personal funds. The violation of this rule is termed as "commingling" and is subject to punitive action.

Much like FDIC for banks, a State Guaranty Fund has been established which provides a means for paying part of an insured's losses if his or her property casualty insurer becomes insolvent.

Unfair marketing practices are both unethical, a violation of state law and punishable by suspension, revocation, and fines.

COMMON MISREPRESENTATIONS

The most common violations in the area of misrepresentations are:

1. Defamation - spreading rumors or falsehoods about a competitor.
2. Coercion or Intimidation- leading an individual to believe that a policy must be purchased from a certain agent, broker, or insurer.
3. Misrepresentations- making false or inaccurate comparisons or statements.
4. Twisting-persuading a policyowner to change policies without regard to the harm that would come to the policyowner.
5. Replacement-the switching of a policy without proper disclosures and a full understanding by the policyowner.
6. Rebating-the payment of part of the agent's commission to the buyer of the policy, either in violation of state law or without proper procedure in states where rebating is permitted.

States also prohibit unfair claims methods and practices, such as:

1. Misrepresenting policy provisions to claimants or insureds.
2. Failing to deliver a determination on a claim within a reasonable time.
3. Failing to settle claims promptly and fairly.
4. Attempting to settle a claim for less than could be reasonably expected.
5. Engaging in activities that result in a disproportionate number of complaints.
6. Failing to provide necessary claims forms.
7. Compelling policyholders to go to court to recover amounts due them by attempting to make unreasonable settlement claims.

Insurers are prohibited from engaging in underwriting or rating that is based on race, religion, and national origin or redlined areas.

In most states the punishment for unethical practices ranges from fines to license suspension and revocation.

Once a license is revoked, normally a one-year waiting period is required for re-application. And in most states a bond will also be required.

People who set high personal and professional goals of honesty, integrity, loyalty, fairness and truthfulness will never have to deal with the penalties set by state governing bodies.

FOCUS POINTS

1. The McCarran-Ferguson Act of 1945 clarified the roles of state and federal government in the regulation of the insurance industry.
2. The federal government regulates the insurance industry in the area of labor practices and antitrust.
3. States oversee the marketing activities of agents, brokers, insurers and otherwise regulate the insurance industry.
4. State insurance Commissioners or Directors are voluntary members of the NAIC.
5. NAIC brings uniformity and communication amongst states on important issues and regulations.
6. All insurance advertising must be truthful and not misleading.
7. All disclosures must be printed conspicuously, no fine print.
8. Deceptive words, phrases or illustrations may not be used to describe a policy.
9. Testimonials must be genuine.
10. Disparaging remarks or statements about a competitor are prohibited.
11. The identity of the insurer must be clear in all advertisements.
12. Both agents and brokers are fiduciaries.
13. Client funds must be deposited in a Premium Trust Fund Account.
14. To deposit funds in a PFTA account direction must be given by the insurer.
15. Commingling is a violation caused by agents or brokers mixing client funds with their own business or personal funds.
16. State Guaranty Fund is to the insurance industry what FDIC is to the banking industry.
17. Unfair marketing practices are unethical, a violation of state law, and punishable by suspension, revocation and fines.
18. Unfair claims methods and practices are a violation of state law.
19. Insurers are prohibited from engaging in underwriting or rating that is based on race, religion, and national origin or redlined area.

20. Once a license is revoked, normally a one year waiting period is required for re-application.

FOOD FOR THOUGHT

To better understand the issues discussed take a few minutes to think about or perhaps on a separate piece of paper outline your perceptions of the following thought provoking issues.

- In what year did Congress enact the McCarran-Ferguson Act and what did it define?
- What is the role of an Insurance Commissioner or Director?
- Name four goals of the NAIC.
- Name four unfair trade practices outlawed in most states.
- Name six guidelines outlined by the NAIC that serve as a model in regulating advertising of products and services.
- What is a PFTA account?
- To avoid commingling what type of account must be set up by the agent or broker?
- What is the STATE GURANTY FUND?
- Name six unfair marketing practices.
- Name seven unfair claims methods and practices.
- What form of underwriting is prohibited by law?
- Once a license is revoked what is the normal waiting period required for re-application?

PROFESSIONAL CODE OF ETHICS

Independent Insurance Agents of America believe in the insurance business and its future, and that the Independent Insurance Agent is The instrument through which insurance reaches its maximum benefit to society and attains its most effective distribution.

I will do my part to uphold and build the Independent Agency System, which has developed insurance to its present fundamental place in the economic fabric of our nation. To my fellow members of the Independent Insurance Agents of America, I pledge myself always to support right principles and oppose bad practices in the business.

I believe that these three have their distinct rights in our business: first, the Public; second, the Insurance Companies, and third the Independent Insurance Agents, and that the rights of the Public are paramount.

To the public

I regard the insurance business as an honorable occupation and believe that it affords me a distinct opportunity to serve society.

I will strive to render the full measure of service that would be expected from an Independent Insurance Agent.

I will analyze the insurance needs of my clients, and to the best of my ability, recommend the coverage to suit those needs.

I will endeavor to provide the public with a better understanding of insurance.

I will work with the national, state, and local authorities to heighten safety and reduce loss in my community.

I will take an active part in the recognized civic, charitable, and philanthropic movements, which contribute, to the public good of my community.

To the companies

I will respect the authority vested in me to act on their behalf.

I will use care in the selection of risky, and do my utmost to merit the confidence of my companies by providing them with the fullest creditable information for effective underwriting, nor will withhold information that may be detrimental to my companies' sound risk taking.

I will expect my companies to give to me the same fair treatment that I give to them.

To fellow members

I pledge myself to maintain friendly relations with other agencies in my community. I will compete with them on an honorable and fair basis, make no false statements, or any misrepresentation or emission of facts.

I will adhere to a strict observance of all insurance laws relative to the conduct of my business.

I will work with my fellow Independent Insurance Agents for the betterment of the insurance business.

Realizing that only by unselfish service can the insurance industry have the public confidence it merits, I will at all times seek to elevate the standards of my occupation by governing all my business and community relations in accordance with the provisions of this Code and by inspiring others to do likewise.

American Institute for Chartered Property and Casualty Underwriters

Code of Professional Ethics Canons and Rules

Canon 1

CPCUs Should Endeavor at All Times to Place the Public Interest Above Their Own.

Rules of Professional Conduct

- R1.1 A CPCU has a duty to understand and abide by all *Rules* of conduct, which are prescribed in the Code of Professional Ethics of the American Institute.
- R 1.2 A CPCU shall not advocate, sanction, participate in, cause to be accomplished, otherwise carry out through another, or condone any act which the CPCU is prohibited from performing by the *Rules* of this *Code*.

Canon 2

CPCUs Should Seek Continually to Maintain and Improve Their Professional Knowledge, Skills, and Competence.

Rules of Professional Conduct

- R2.1 A CPCU shall keep informed on those technical matters that are essential to the maintenance of the CPCU's professional competence in insurance, risk management, or related fields.

Canon 3

CPCUs Should Obey All Laws and Regulations, and Should Avoid Any Conduct or Activity Which Would Cause Unjust Harm to Others.

Rules of Professional Conduct

- R3.1 In the conduct of business or professional activities, a CPCU shall not engage in any act or omission of a dishonest, deceitful, or fraudulent nature.
- R3.2 A CPCU shall not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgment and skills.
- R3.3 A CPCU will be subject to disciplinary action for the violation of any law or regulation, to the extent that such violation suggests the likelihood of professional misconduct in the future.

Canon 4

CPCUs Should Be Diligent in the Performance of Their Occupational Duties and Should Continually Strive to Improve the Functioning of the Insurance Mechanism.

Rules of Professional Conduct

- R4.1 A CPCU shall competently and consistently discharge his or her occupational duties.
- R4.2 A CPCU shall support efforts to effect such improvements in claims settlement, contract design, investment, marketing, pricing, reinsurance, safety engineering, underwriting, and other insurance operations as will both inure to the benefit of the public and improve the overall efficiency with which the insurance mechanism functions.

Canon 5

CPCUs Should Assist in Maintaining and Raising Professional Standards in the Insurance Business.

Rules of Professional Conduct

- R5.1 A CPCU shall support personnel policies and practices which will attract qualified individuals to the insurance business, provide them with ample and equal opportunities for advancement, and encourage them to aspire to the highest levels of professional competence and achievement.
- R5.2 A CPCU shall encourage and assist qualified individuals who wish to pursue CPCU or other studies, which will enhance their professional competence.
- R5.3 A CPCU shall support the development, improvement, and enforcement of such laws, regulations, and codes as will foster competence and ethical conduct on the part of all insurance practitioners and inure to the benefit of the public.
- R5.4 A CPCU shall not withhold information or assistance officially requested by appropriate regulatory authorities who are investigating or prosecuting any alleged violation of the laws or regulations governing the qualifications or conduct of insurance practitioners.

Canon 6

CPCUs Should Strive to Establish and Maintain Dignified and Honorable Relationships with Those Whom They Serve, with Fellow Insurance Practitioners, and with Members of Other Professions.

Rules of Professional Conduct

- R6.1 A CPCU shall keep informed on the legal limitations imposed upon the scope of his or her professional activities.
- R6.2 A CPCU shall not disclose to another person any confidential information entrusted to, or obtained by, the CPCU in the course of the CPCU's business or professional activities, unless a disclosure of such information is required by law or is made to a person who necessarily must have the information in order to discharge legitimate occupational or professional duties.
- R6.3 In rendering or proposing to render professional services for others, a CPCU shall not knowingly misrepresent or conceal any limitations on the CPCU's ability to provide the quantity or quality of professional services required by the circumstances.

Canon 7

CPCUs Should Assist in Improving the Public Understanding of Insurance and Risk Management.

Rules of Professional Conduct

- R7.1 A CPCU shall support efforts to provide members of the public with objective information concerning their risk management and insurance needs, and the products, services, and techniques which are available to meet their needs.
- R7.2 A CPCU shall not misrepresent the benefits, costs, or limitations of any risk management technique or any product or service of an insurer.

Canon 8

CPCUs Should Honor the Integrity and Respect the Limitations Placed upon the Use of the CPCU Designation.

Rules of Professional Conduct

- R8.1 A CPCU shall use the CPCU designation and the CPCU key only in accordance with the relevant GUIDELINES promulgated by the American Institute.
- R8.2 A CPCU shall not attribute to the mere possession of the designation depth or scope of knowledge, skills, and professional capabilities greater than those demonstrated by successful completion of the CPCU program.
- R8.3 A CPCU shall not make unfair comparisons between a person who holds the CPCU designation and one who does not.
- R8.4 A CPCU shall not write, speak, or act in such a way as to lead another reasonably to believe the CPCU is officially representing the American Institute, unless the CPCU has been duly authorized to do so by the American Institute.

Canon 9

CPCUs Should Assist in Maintaining the Integrity of the *Code of Professional Ethics*.

Rules of Professional Conduct

- R9.1 A CPCU shall not initiate or support the CPCU candidacy of any individual known by the CPCU to engage in business practices which violate the ethical standards prescribed by this *Code*.
- R9.2 A CPCU possessing unprivileged information concerning an alleged violation of this *Code* shall, upon request, reveal such information to the tribunal or other authority empowered by the American Institute to investigate or act upon the alleged violation.
- R9.3 A CPCU shall report promptly to the American Institute any information concerning the use of the CPCU designation by an unauthorized person.

PUBLISHER'S NOTE

Important Notice

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