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# **STATE REGULATORY JURISDICTION**

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## **LEGISLATION**

### **STATE LAWS**

Courts have long held that insurance is an industry which, like banking, is vested in the public interest. This means that insurance is a business which affects many people, and the public welfare demands that the industry be regulated in its activities. As a result, the insurance industry is highly-regulated by state and federal entities in virtually every facet of its operation. Most of the regulations are state-imposed by the passage of specific insurance statutes and regulations. In recent years there have been several federal regulations affecting insurance (COBRA, Health Care Portability, ERISA, Medicare, etc.).

Rapidly rising costs, inadequate health care services for many segments of the population, and the clear failure of past measures to solve the problems of health care have created growing dissatisfaction with the present system of delivering and financing health care in this country and will likely result in more regulations in the future.

## **COURT ACTIONS**

### **INTREPRETATIONS**

The complicated nature of insurance contracts makes them difficult for the insured to understand if he or she attempts to do so (Few individuals read their insurance policies, and even fewer would understand what they had read. Therefore, in the event of a claim for loss under a policy (other than life insurance), there is often misunderstanding by an insured as to whether there is coverage or not. When such misunderstanding cannot be resolved by the insurer and insured, courts are asked to interpret the contract.

### **EFFECT ON LAW AND POLICY FORMS**

Court decisions resolving conflicts related to insurance coverage, in addition to resolving the issue at hand often become a precedent as to how future claims will be settled. Often, because of a court interpretation, a regulation or change in the policy form is necessary to clarify the intent of the policy.

## **RELATED FEDERAL LAWS AND COURT CASES**

### **PAUL VS. VIRGINIA**

The case of Paul vs. Virginia was an important precedent concerning the regulation of insurance. Samuel Paul was a native of Virginia who represented New York insurance companies in his state. Paul challenged the right of the state to regulate insurance by refusing to obtain a license from the state. When he continued to sell insurance without a license, he was arrested and fined \$50.

The case was carried all the way to the United States Supreme Court, where it was finally decided in 1869. In rendering its decision, the Supreme Court stated that insurance was not interstate commerce. The decision of the United States Supreme Court that insurance was not interstate commerce, and therefore was not subject to regulation by the federal government, stood for 75 years.

### **U.S. VS. SOUTH-EASTERN UNDERWRITERS ASSOC.**

After a period of 75 years, the federal government's authority to regulate insurance was tested once again. In 1942, the Attorney General of the United States filed a brief on the Sherman Act against the South-Eastern Underwriters Association (SEUA), a cooperative rating bureau, alleging that the bureau constituted a combination in restraint of trade. In its decision of the SEUA case in 1944, the Supreme Court reversed its decision of *Paul vs. Virginia*, stating that insurance is interstate commerce and is therefore subject to regulation by the federal government. This decision stands today.

### **MCCARRAN-FERGUSON ACT/PUBLIC LAW 15**

During the period of time that the SEUA case was being decided and appealed, the insurance industry arranged to have bills introduced into Congress which would have exempted the insurance industry from the provisions of the antitrust laws. These bills were all defeated, but finally a bill drafted by the National Association of Insurance Commissioners was passed. This bill was **Public Law 15** or the **McCarran-Ferguson Act**, which became law on March 9, 1945. Congress insisted that it was the right of the federal government to regulate the insurance industry but stated in the McCarran Act that the federal government would not regulate insurance **as long as the states did an adequate job** of regulating the industry. In addition, the law declared a 2-year moratorium on the regulation of insurance by the federal government and stated that the federal government would not regulate the industry until after January 1, 1948, at which time it would do so to the extent that the industry was not being regulated by the several states. Following the enactment of Public Law 15, the several states attempted to put their houses in order, enacting rating laws, fair trade practices, and extending the licensing and solvency requirements.

In the McCarran-Ferguson Act, Congress reaffirmed the right of the federal government to regulate insurance, but it deferred some of this authority to the states. In effect, the law explicitly grants to the states the right to regulate insurance, a power that the Supreme Court in the SEUA case had concluded was vested in Congress under the commerce clause of the Constitution. The exemption from federal law was not complete, however. Public Law 15 provided that the Sherman Act would continue to apply to **boycott, coercion, or intimidation**.

Today, insurance is regulated by each state through the three basic branches of government: the legislative, judicial, and executive branches.

# COMMISSIONER/DEPARTMENT OF BANKING AND INSURANCE

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## BROAD POWERS OF COMMISSIONER

In accordance with the Administrative Procedure Act, the Commissioner has the authority to make and enforce rules and regulations to implement and carry out the purposes of the Insurance laws of New Jersey.

As administrator and chief executive officer of the Department of Banking and Insurance, the Commissioner has the authority and the obligation to:

- Administer the Department's work;
- Appoint and remove officers and other personnel employed within the Department;
- Perform, exercise, and discharge the functions, powers, and duties of the Department through any divisions established by law;
- Organize the work of the Department under any structural or organizational units the Commissioner determines to be necessary for efficient and effective operation;
- Adopt, issue and promulgate, in the name of the Department, such rules and regulations as may be authorized by law.
- Determine all matters of policy or processes necessary to enforce properly and give effect to any of the Commissioner's powers or duties;
- Make an annual report to the Governor and to the Legislature about the Department's operations for the preceding fiscal year and furnish any other reports which may be requested by the Governor or may be required by law;
- Appoint advisory committees as necessary to advise and assist the Department or any division in carrying out its functions and duties;
- Perform any other functions required by the Insurance Code or other law; and
- Maintain suitable headquarters for the Department and such other quarters as the Commissioner deems necessary for the proper functioning of the Department.

The Commissioner may not have ownership of, interest in, or any transactions in any capacity with any financial institution or insurance company licensed or regulated by the Department, except in the strict performance of the Commissioner's duties.

The Commissioner is appointed by the Governor, with the advice and consent of the Senate. The Commissioner serves at the pleasure of the Governor during the Governor's term of office and until a successor is appointed and qualified to take office. **(17:1C-2,3)**

A rule shall be deemed approved unless disapproved within 60 days of submission. No action may be taken by the legislature until after one day from the date of the standing reference committee's report. (52:148-4.3)

## NOTICE AND HEARING

The Commissioner has the power to conduct investigations, administer oaths, interrogate licensees, and issue subpoenas to any licensee or other person in connection with any investigation, hearing, or other proceeding. Upon appropriate notice, the Commissioner may summon the attendance of witnesses and the production of related books, records, accounts, papers, and other documents.

When the Commissioner believes that an insurance rule or regulation has been violated, he or she has the right to call a disciplinary hearing. The person or company charged must be given **10 days'** written notice of the hearing date and time.

When a hearing is to be held, the Commissioner shall give notice to any person, firm, corporation, association or other legal entity affected. The notice may be delivered directly to the person, or it may be sent by certified or registered mail. The notice shall refer to the sections of the law under which action is being taken or is proposed, and it may be in the form of a "show cause" order stating that proposed action may be taken unless the person shows cause at the hearing why the proposed action should not be taken. Notice of a hearing shall state: The time, place, and nature of the hearing. The authority under which the hearing is to be held and information reasonably sufficient to apprise the person of the nature of the hearing.

At or prior to the hearing, the Commissioner may administer oaths, issue subpoenas, require evidence to be displayed, and receive oral or documented evidence. Anyone failing to comply with the subpoena may be ordered by the New Jersey Superior Court to comply or face contempt of court charges.

A person subpoenaed can be required to testify, even if such testimony may result in self-incrimination. However, if a person is required to testify after asking not to testify for fear of self-incrimination, the person cannot be prosecuted or subjected to any penalty because of the testimony.

In most cases, advance notice and a hearing is required before rules and regulations which are made, altered, modified, amended or repealed may take effect. When a hearing is not required, the Commissioner has the authority to voluntarily conduct a hearing before taking action. The Commissioner shall give advance notice at least 10 days prior to any required hearing. Following the hearing, the rule or change shall not take effect until after it has been on file for at least five days with the Secretary of State. (17:1-8.2)

## PENALTIES

After the hearing, the Commissioner will decide if a violation has occurred. If so, the Commissioner will issue a Cease and Desist Order, which requires the unlawful action to be stopped, and may levy a fine of up to **\$1,000** for each charge. If the Commissioner determines that the person knew (or should have known) that he or she was violating the law, the fine can be increased to **\$5,000** per charge.

If the Commissioner believes the charges are exceptionally serious, he or she can issue a Cease and Desist Order against the charged person before the hearing concludes or even begins.



If a person violates a Cease and Desist Order, the matter takes a decidedly more serious turn. The Commissioner can turn the matter over to the New Jersey Superior Court for further legal action and can assess a fine of up to **\$5,000** for each violation.

Any person violating an insurance law or regulation is liable to a penalty of no more than **\$5,000 for a first offense** and no more than **\$10,000 for each subsequent offense**. The Commissioner or a court may also order restitution of moneys owed and reimbursement of the costs of investigation and prosecution. These penalties are separate from the cease and desist order or violation of a cease and desist order.

In New Jersey, an **administrative order** is an order issued by the Commissioner or the Department of Banking and Insurance. An **administrative penalty** is a sanction imposed by the Commissioner on an insurance producer or insurance company. A sanction can be the **revocation or suspension** of a license or the imposition of a fine or penalty.

## MISDEMEANOR

It is a misdemeanor for any person or other entity to act as an insurer in New Jersey without having the proper certificate of authority. It is a misdemeanor for any person to transact any insurance business in this state as a producer without having the required license.

New Jersey law establishes some specific fines that insurance producers are subject to if they are found guilty of specific code violations. Among these specific fines are:

- Failing to maintain a complete and accurate business address on file with the Department or failing to notify the Department within **30 days** of any change: **\$250** (If the violation continues for more than 60 calendar days, the penalty is increased to the maximum allowed by law.)
- Paying a license or processing fee with a check that is later returned for insufficient funds or because the account is closed: **\$500**
- Failing to notify the Department of a change of business name within **30 days**: **\$250**
- Failing to notify the Department of the addition or deletion of owners of more than 5% or officers, directors, or partners: **\$250**
- Failure of an employing insurer, producer, or other custodian to return a license to the possession of the named producer on demand: **\$500**
- Failing to maintain in at least one office with an address on file with the Department, copies of all employment contracts and all agency contracts: **\$100 per contract**.
- Failing to or refusing to comply with a subpoena: fine up to **\$5,000 for the first offense**, and up to **\$10,000 for each subsequent offense**.

# DEFINITIONS

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## INSURANCE-RELATED CONDUCT

The term "**insurance-related conduct**" includes the following:

- Selling, soliciting, negotiating and binding insurance policies;
- All communication with the insured concerning any terms and conditions of a policy;
- Office management policies affecting insureds;
- Processing claims; and
- Transmitting funds between the insured, producers, premium finance companies and insurance companies.

## DOMESTIC, FOREIGN, AND ALIEN COMPANIES

Insurance companies are classified as to the **location of incorporation**. Regardless of where an insurance company is incorporated, they must qualify and receive a Certificate of Authority before transacting insurance within the state.

A **Domestic** insurer is an insurance company that is incorporated in this state. In most cases, the company's home office is in the state in which it was formed - the company's domicile. For instance, a company chartered in Pennsylvania would be considered a Pennsylvania domestic company.

A **Foreign** insurer is an insurance company that is incorporated in another state, territorial possession or Washington, D.C. For example, a company chartered in California would be a foreign company within the state of New York.

An **Alien** insurer is an insurance company that is incorporated outside the United States.

## STOCK AND MUTUAL

**Stock companies** are owned by the stockholders who provide the capital necessary to establish and operate the insurance company. In return for their investments, the stockholders share in any profits or losses. Officers are elected by the stockholders and manage stock insurance companies. Although traditionally stock companies issued nonparticipating policies, in which the policyowners did not share in profits or losses arising in the operation of the business, currently more and more stock companies issue participating policies. Earnings from operations may be distributed to the stockholders as dividends on stock or may be kept as "retained earnings."

**Mutual companies** are insurance organizations owned by the policyholders. Profits are returned to the policyholders as non-taxable dividends (return of premiums). Dividends are an overpayment or return of excess premiums that come from a difference between the premium charged and the

earnings and actual costs of providing coverage. Mutual companies are sometimes considered participating companies because policyholders are entitled to a portion of surplus earnings of the company through dividends. A Board of Trustees is chosen by the policyholders to manage the company.

## **REINSURANCE**

Reinsurance is a contract under which one insurance company (the reinsurer) in consideration of a premium paid to it, agrees to indemnify another insurance company for part or all of its liabilities from insurance policies it has issued. This is a method used by insurers to protect against catastrophic losses. The originating company that procures insurance on itself in another insurer is called the "ceding insurer" the other insurer is called "assuming insurer."

When reinsurance is purchased on a specific policy, it is classified as "facultative reinsurance." When an insurer has an automatic reinsurance agreement between itself and the reinsurer in which the reinsurer is bound to accept all risks ceded to it, it is classified as a "reinsurance treaty." Treaties are usually negotiated for a period of a year or longer

## **CERTIFICATE OF AUTHORITY**

Before insurers may transact business in a specific state, they must apply for a license or **Certificate of Authority** from the state department of insurance and meet any financial (capital and surplus) requirements set down by the state. Insurers who meet the state's financial requirements and are approved to transact business in the state are considered **authorized or admitted** into the state as a legal insurer. Those insurers who have not been approved to do business in the state are considered **unauthorized or non-admitted**. Most states have laws that prohibit unauthorized insurers to conduct business in the state, except through licensed excess and surplus lines brokers.

## **A PRODUCER ACTING AS AN:**

### **INSURANCE AGENT**

**An insurance agent** is an insurance producer acting as an agent authorized in writing by any insurance company to solicit, negotiate or sell insurance contracts, or collect premiums on its behalf. The agent is also authorized to countersign insurance policies on the company's behalf.

### **INSURANCE BROKER**

When an insurance producer negotiates for an insurance contract on behalf of a client, the producer is acting as a **broker**.

Even if there is not a contract establishing an agency relationship, an insurer that delivers an insurance contract in New Jersey to an insurance producer acting for an insured (other than himself) is deemed to have authorized the producer to receive, on its behalf, premium payments due on the contract at its issuance.

## **INSURANCE CONSULTANT**

**An insurance consultant** is a person who, for a fee, commission, or other consideration, offers any advice, counsel, opinion, or service regarding the benefits, advantages, or disadvantages promised under any policy of insurance that could be issued in New Jersey. "Insurance consultant" does not include bank trust officers, attorneys, and certified public accountants who negotiate contracts on behalf of others, or who provide general financial counsel, if no commission or brokerage fee is paid for those services.

**Commission** means any payment to a producer from an insurer which is contingent upon the sale of a policy, contract, or certificate of insurance. No insurance producer may pay commission to an unlicensed individual or business entity. Payment of renewal or deferred commissions to an individual or business entity that no longer holds a license is permitted only for business produced by that individual or business entity while licensed. No licensee shall pay, return, or offer to pay or return, any portion of a commission to an insured or prospective insured. No commission or compensation shall be paid to anyone whose license has been revoked or suspended except for services rendered while licensed. This does not prohibit any person from selling their book of business for compensation to continue an agency business under a new owner, or from asserting a right of setoff against an insurance producer or limited insurance representative whose license or registration is revoked. (1 1:17B-2.1) A pertinent change was made to this section 11/02 that now allows referral fees.

### **Possible Questions:**

1. Can a licensed producer who has had his insurance license revoked collect commissions? **NO**
2. Can a retired producer who no longer has a current license collect commissions on policies he sold while validly licensed? **YES**
3. Can I use the name of a previously licensed business entity that I have just purchased? **YES**
4. What if their name/license was previously "revoked"? **NO**

### **Fee**

Any money or other consideration, except commissions, paid or received for service or advice in connection with a policy, contract, or certificate of insurance. This term includes brokerage fees and consultant fees, & is broader than the term "service fee" because it includes fees for giving insurance advice.

### **Broker or Consultant Fee**

Only an insurance producer acting as an insurance broker or consultant may charge a fee to a policyholder or insured for services rendered as an insurance producer. An insurer or insurance producer may pay or assign commissions, service or brokerage fees, or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in NJ, unless the payment would violate the laws of this state.

Insurance producers acting as agents for an insurance company shall **not** charge the insured or policyholder any fee for services rendered. Insurance producers acting as a **broker or consultant** who charge such a fee must first obtain from the insured:

- a written agreement containing a clear statement of the amount to be charged and the nature of the service to be provided
- A statement that the fees are not part of the premium and can be charged only with the insured's consent
- A clear statement of whether a commission will be received on the purchase of insurance
- The signature of the insured and the broker or consultant, and the date
- Any fee charged shall bear a reasonable relationship to the services provided & not be discriminatory
- A new written agreement is required for each fee charged and each time a fee is charged.
- An initial agreement shall not be used to charge a fee for a renewal.
- No producer shall pay, return, or offer to pay or return, any portion of a fee as an inducement to purchase a specific policy or coverage, or coverage from a particular insurer.
- No fee shall be charged for services not actually performed. Only a duly authorized employed producer on behalf of his or her employer may execute a written fee agreement on behalf of any other insurance producer or premium finance company. (11:17B-3.1)

**Service Fees** means a fee charged to an insured or prospective insured by an insurance broker or consultant for the placement or financing of insurance, or for credit reporting, obtaining auto operators' driving records, claim or accident reporting, adjustment of claims, inspection fees and referral fees. (11:17B-1.1 to 1.3). An insurance producer acting as an insurance broker or consultant may charge a fee for services in selling or servicing personal lines property/casualty or personal lines surplus lines insurance subject to the following conditions:

- No service fee for any one policy shall exceed \$20
- No fee may be charged for completing accident or claim report forms, or providing forms required by an insurer
- An inspection fee on a surplus lines policy shall not exceed 2% of the premium or \$10, whichever is greater (but the insured may be charged the actual amount if the firm or person performing the service is not an insurance agent or broker)
- No charge shall be made for services not actually performed
- A maximum service fee of \$15.00 may be charged upon placement of a renewal, except that an inspection fee on surplus lines business may be charged every three years
- Only one service fee per policy per year shall be charged, regardless of whether the policy term is for less than a year
- A motor club membership sold in connection with a policy shall not be considered separate coverage for the purpose of charging a service fee
- A motor club claim arising from the same loss as a claim under a private passenger automobile coverage policy shall not be considered a separate claim for the purpose of charging a service fee
- Bail Bond agencies may not charge 1.fugitive fees, 2.Banking fees, 3.service related fees. No insurance producer may charge a service fee for services rendered in the sale or service of life or health insurance. (11:17B-3.2)

## **SELL, SOLICIT, AND NEGOTIATE**

**Sell** means to exchange a contract or policy of insurance by any means, for money or its equivalent, on behalf of an insurer.

**Solicit** means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

**Negotiate** means the act of directly conferring with or offering advice to a purchaser or prospective purchaser of a particular contract or policy of insurance concerning any of the substantive benefits, terms or conditions of the contract or policy, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

A person may not sell, solicit or negotiate insurance in this State unless licensed for that line of authority.

## **LICENSING**

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### **TYPES OF LICENSES / AUTHORITIES / REQUIREMENTS**

An individual must be licensed as an insurance producer before conducting any activities associated with soliciting, negotiating, or selling an insurance contract. More specifically, these acts include:

- Advising any prospective policyowner to buy a policy or to insure with a particular company;
- Discussing with a prospective policyowner the effect of age, health, or other risk-related conditions that he or she may have;
- Initiating sales over the phone or in any other way;
- Completing or signing applications for insurance (unless the individual is the prospect's legal representative);
- Disseminating information as to coverages or rates (not including buyer's guides and applications that are requested by prospective policyowners);
- Discussing the coverages or the terms of a proposed contract with a prospective policyowner or offering advice about which coverage to buy;
- Asking about terms of any existing coverage an individual may have and/or recommending any changes to his or her policy;
- Signing insurance policies, binders, or endorsements or authorizing their issuance or delivery;
- Adding or deleting coverages;
- Collecting premiums; and
- Responding to a policyowner's questions regarding policy provisions or coverage.

People who perform clerical tasks that are not related to soliciting or negotiating insurance contracts are not required to be licensed. **Clerical activities** exempt from licensure include:

- Billing, filing, and opening mail;
- Recording information from an applicant or policyowner and typing applications and/or policies;
- Conducting market research and prospecting, as long as no attempt is made to discuss any kind of coverage with a prospective policyholder;
- Taking messages from or relaying messages to policyowners;
- Taking information relative to a claim or a review;
- Disseminating buyer's guides or applications for coverage in response to a policyowner's request;
- Receiving premiums for existing policies at the place of business; and
- Informing a policyowner about his or her coverage as indicated in policy records.

Insurance producers who solicit insurance must first identify themselves (to each person solicited) by name, as well as the name of the insurer or insurance producer they represent, and the nature of their relationship with the insurer or producer being represented. Producers must also keep the license at the business address on file with the Department and display it to an insured or prospective insured on request.

## **PRODUCER**

To qualify for a producer license, candidates must meet the following requirements:

- Be 18 years of age or older;
- Complete and sign a licensing application;
- Complete an approved prelicensing education course within 2 years before submitting the licensing application (unless exempt);
- Pass a licensing examination within 1 year before submitting a licensing application;
- If applying as a resident, be a resident of New Jersey or plan to engage in business at an office in the state;
- Engage in insurance business with the public and not principally for their own accounts or accounts of their employer or family (controlled business); and
- Be of "good reputation" and have no prior convictions of a crime or moral turpitude that is material to their fitness to be a producer.

## **LIMIT ON CONTROLLED BUSINESS**

Insurance licenses are intended to be issued for the purpose of authorizing the transaction of business with members of the general public, and not primarily for allowing someone to benefit from commissions on business which insures their own personal interests. This is why the law imposes limits on the amount of "controlled business" a producer may write. Controlled business means insurance covering the interests of the licensee, members of the licensee's family, members or employees of any business entity of which the licensee is an officer, or officers or employees of an business entity in which the licensee or members of his or her immediate family own a controlling interest, or the property or interests of those persons.

A certain amount of "controlled business" is permitted, but if that level is exceeded, the license is deemed to have been used principally for the purpose of writing controlled business and it may be refused, revoked, or suspended. A license is deemed to have been used principally for writing controlled business if the Commissioner finds that during any 12-month period the aggregate commissions or compensation accrued from such business exceed or will exceed the aggregate commissions or compensation accruing on all other business written by the licensee during that same period. In other words, during any 12-month period, the commissions earned on controlled business must not exceed 50% of the total commissions earned on all business. (17:22A-17.6)

Producers licensed in the state of New Jersey may be authorized to write the following kinds of insurance:

### **DESIGNATED LINES AND AUTHORITIES**

No insurance producer license shall be issued unless it designates one or more of the following authorities:

#### **“MAJOR LINES”**

- Life
- Health
- Property
- Casualty
- Personal Lines Property/Casualty
- Surplus Lines
- Title insurance

#### **“MINOR LINES”**

- Bail Bonds
- Credit
- Ticket
- Group mortgage cancellation
- Mortgage guaranty
- Legal insurance
- Self-storage personal property

**Note:** Life & Health Insurance; Property & Casualty Insurance can be combined together or obtained separately.



Each producer is authorized to write only the kinds of insurance which the Commissioner has designated for each authority.

## **“MAJOR LINES”**

**Life” authority** includes all coverages defined as "life insurance," "annuity" and "contract on a variable basis" under the New Jersey insurance laws. "Life insurance" means a contract under which an insurer is obligated to pay a benefit upon the cessation of a human life (other than workers compensation), including contracts providing endowment benefits, accidental death and dismemberment benefits, and the typical life insurance policy options and settlement options. "Annuity" means a contract which is not defined as life insurance or health insurance, under which an insurer obligates itself to make periodic payments over a specified period of time, even if such contracts provide some incidental life insurance or health insurance benefits.

"Contract on a variable basis" means any separate account contract providing for the dollar amount of life insurance, annuity, or other benefits to vary according to investment results of one or more accounts in which amounts under the contract have been placed. No person shall be authorized to transact business regarding contracts on a variable basis unless that person also holds a securities license as required by any state or federal law.

**Health authority** includes all coverages defined as "health insurance," which means a contract under which an insurer is obligated to pay or allow a benefit because of the bodily injury, disablement, sickness, or accidental death of a human being, or because of any expense related thereto, or expense incurred in the prevention of sickness. (Health insurance does not include workers compensation coverages.)

**Property authority** includes all coverages written by authorized insurers for direct and consequential loss or damage to property of any kind including fire and allied lines, earthquake, growing crops, ocean marine, inland marine, workers compensation, automobile property damage, boiler and machinery, credit property, burglary and theft, glass, sprinkler leakage and water damage, livestock, smoke or smudge, physical loss to buildings, radioactive contamination, mechanical breakdown or power failure, other property loss, and mortgage guaranty insurance.

**Casualty authority** provides coverage against legal liability from death, disability, injury, or damage to real or personal property including employers liability, automobile liability bodily injury, automobile liability property damage, other liability, other casualty loss, fidelity and surety, and municipal bond insurance.

**Personal Lines authority** includes all property and casualty insurance coverage sold to individuals and families for primarily non-commercial purposes.

**Surplus lines authority** includes all coverages defined as "surplus lines," which means coverages of subjects resident, located, or to be performed in New Jersey, which cannot be procured from authorized insurers and which are properly placed with an eligible surplus lines insurer through a licensed surplus lines agent. The agent **MUST** possess a property and casualty license.

**Title insurance authority** includes all policies guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the un-marketability of the title to such property, and guaranteeing, warranting or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any real business which is substantially equivalent.

## “MINOR LINES”

**Bail Bonds** producer is required to take the prescribed course and exam. This will then enable him to Bail Bond Coverage as prescribed law.

**Ticket Insurance** is purchased by those who want to “cover” their ticket and or baggage. A person who is taking a cruise may want to insure their investment against sickness or accident. In the event they are unable to travel due to a covered peril (illness), or something happens to their luggage, the ticket insurance company will reimburse their money minus a deductible.

**Group Mortgage Cancellation & Mortgage** Guaranty is usually sold by the companies who issue the mortgage in order to protect the insured of their financial responsibility.

**Legal Insurance** is purchased by someone to “cover” the expenses rendered by an attorney for specific legal services as covered by that particular policy (i.e., divorce).

**Self-Storage Personal Property** will cover the insured’s belongings while stored in a commercial facility (not your own personal garage). The insured would be motivated to buy this insurance when their personal or commercial belongings are not insurable by other policies (i.e., Homeowners or Commercial Property Policies).

**Credit insurance** means insurance coverage’s for credit health and credit life, credit disability, credit unemployment, involuntary unemployment, mortgage life, mortgage guarantee, mortgage disability, automobile dealer GAP, credit property or any other insurance offered in connection with the extension of credit that is limited to reducing or extinguishing that credit obligation.

Non-resident limited lines do not apply in the New Jersey authority

## BUSINESS ENTITY

The Commissioner may issue a resident business entity insurance producer license to any business entity that meets all of the following qualifications:

- The business entity is domiciled in New Jersey or is authorized by the Secretary of State to do business in New Jersey;
- The business entity has completed an application, signed by each partner or officer who holds an insurance producer license;
- The business entity is worthy of a license, and the partners or officers are of good

reputation, good moral character, and have not been convicted of any crime compromising their fitness for licensure as an insurance producer;

- The business entity will engage in the insurance business with the general public and not for its own account; and
- The business entity has at least one partner or officer who holds a valid insurance producer license.

Although not every partner or officer needs to hold an individual producer license, every partner or officer who will actively solicit the sale of insurance must hold an individual producer license and, in any event, at least one partner or officer must hold an individual producer license.

All licensed partners, officers, and owners of 5% or more of the organization will be held responsible for the conduct of the organization.

No producer license will be issued to a business entity operated by a person who has had his or her license revoked within the past 10 years.

## **NONRESIDENT**

### **PRODUCER**

In New Jersey, a nonresident is defined as "a person for whom a state other than New Jersey has been designated their home state for purposes of licensure."

A nonresident can transact insurance in New Jersey by obtaining a **nonresident producer license**. The following requirements must be met by the producer:

- Currently hold a license in the same authority of insurance in his or her home state of residence;
- Submit the proper request for licensure and pay the fees;
- Submit or transmit to the Commissioner the application for licensing from the home state or a completed uniform application.

To protect the consumers of New Jersey, nonresident producers must appoint the Commissioner as their agent to receive service of original legal process in New Jersey. (Any court order intended for a nonresident producer can be delivered to the Commissioner.)

A nonresident moving to New Jersey, upon losing resident status in their home state, shall notify the department within 20 days of the intent to qualify as a resident. They will receive a 90-day education waiver (from date of notice) during which time they can continue to act as a producer. He/she must take and pass only the state regulations portion of the exam.

If moving his residence or primary place of business to New Jersey, a nonresident producer must notify the Department of the change of address and contact information within 30 days. Within 90 days of change in resident status in the prior state, the producer must notify the Department of the request to qualify as a resident insurance producer in New Jersey, and submit completed

fingerprinting forms. Upon submission of all required and approved forms, the licensee's status will be changed from nonresident to resident.

## **BUSINESS ENTITY**

Like nonresident producers, nonresident producer business entities can obtain nonresident licenses as long as they meet all of the qualifications (other than location) required of resident producer business entities. They, too, must already possess resident licenses in their home state of residency.

## **PRELICENSING REQUIREMENTS**

Prior to being admitted to the state licensing examination, an applicant must complete a minimum number of hours of prelicensing education for each line of business that he/she intends to transact. The course taken must include education regarding the regulations of the insurance industry in New Jersey. Self-study courses and courses taken online may be counted toward prelicensing education.

All applicants for a resident insurance producer license must pass the State licensing examination.

The Commissioner may waive the prelicensing education if the applicant holds a professional designation approved by the Commissioner in the kind of insurance for which the applicant seeks authority.

The Department recognizes the following professional designations as acceptable substitutes for the producer education and examination requirements (except continuing education):

- For life, accident and health or sickness, variable life and variable annuity authorities:
- Certified Employee Benefits Specialist (CEBS);
- Chartered Financial Consultant (ChFC);
- Certified Insurance Counselor (CIC);
- Certified Financial Planner (CFP);
- Chartered Life Underwriter (CLU);
- Fellow, Life Management Institute (FLMI); or
- LUTC Fellow (LUTCF);
- Registered Health Underwriter (RHU);
- Certified Employee Benefits Specialist (CEBS);
- Registered Employee Benefits Consultant (REBC); or
- Health Insurance Associate (HIA);
- For property, casualty, personal lines, bail bonds and surplus lines authorities:
  - Accredited Adviser in Insurance (AAI);
  - Associate in Risk Management (ARM);
  - Certified Insurance Counselor (CIC); or
  - Chartered Property & Casualty Underwriter (CPCU);

An applicant seeking to rely on a recognized professional designation to satisfy any education or examination requirements must submit adequate proof of such achievement, including an official

document or transcript issued by the organization conferring the designation.

Applicants previously licensed as nonresident producers who are applying as resident producers must apply for a waiver of prelicensing education and pass the New Jersey law and practice portion of any required examination for the authorities requested within 90 days of establishing New Jersey as the home state. The Department may extend this time upon written request by the applicant.

Applicants who previously held a New Jersey insurance license which was terminated as a condition of public employment are exempt from re-examination, provided that the public employment was in an insurance-related field and the license application is made within 1 year of termination of that employment.

Any individual previously licensed and in good standing with another state who applies for an insurance producer license in New Jersey will not be required to complete any prelicensing education or examination. The application must be received by the department within 90 days of the cancellation of the previous license.

The Commissioner may, by order, require a licensee or applicant to retake the licensing examination. The order must clearly state the reasons for such requirement. A licensee's license will remain effective pending the results of the new examination unless otherwise suspended or revoked. The licensee or applicant so ordered may appeal the Commissioner's decision within 10 days of receiving the order to retake the examination.

## **SURPLUS LINES**

**A surplus lines agent** is a person or organization that is allowed to write business in New Jersey for insurance companies that **do not possess a certificate of authority** in New Jersey if no authorized insurers in New Jersey offer the specific type of insurance in question.

Applicants for surplus lines authority must:

- Be New Jersey residents, and
- Hold a property and casualty license.
- Has passed the State Exam for Surplus Lines Authority, no course required
- Must apply and be denied by 3 admitted carriers before you can apply to a surplus carrier

Surplus lines producers cannot charge any fees to an originating broker on any contract in excess of \$50 plus the actual costs incurred for any services performed by a person that is not associated with the surplus lines producer (such as inspection services). Surplus lines license holders can be requested at any time to provide information to the Commissioner about the volume of surplus lines business transacted.

A producer with surplus lines authority could have the authority revoked by the Department for failing to maintain records of the amount of surplus lines business written.

## TEMPORARY WORK AUTHORITY

After completing the procedural steps required for obtaining a producer license, an applicant may have to wait some time before the license is actually issued. An applicant may begin working as a producer immediately, after completing all the required procedures, by obtaining a **temporary work authority**. The temporary work authority expires no more than **60 days** after it is issued and becomes ineffective when the actual license is issued.

## ADDITIONAL AUTHORITIES - CURRENT LICENSEE

A currently licensed individual producer may obtain additional authorities by submitting the following:

- His or her current license, marked to request the additional authority or authorities, dated, signed, and certified to be correct by the applicant
- If a resident, a certificate evidencing completion of an approved course of prelicensing education, if required (or a certificate evidencing waiver of the education requirement), and a certificate evidencing that the applicant has passed the state licensing examination for the authority requested (or a certificate evidencing waiver of the examination requirement)
- If a nonresident, a recent certification from the insurance licensing authority of the applicant's home state that he or she holds a current license with comparable authority
- A valid check or money order for the required processing fee (\$40)

## CONTRACTUAL RELATIONSHIPS

### COMPANY / PRODUCER

Contractual relations between a producer and an insurance company are conducted through a **contract signed by both parties**. An insurer authorized to transact insurance business in New Jersey may appoint as its agent anyone who holds a valid producer license.

The written contract between the insurer (principal) and the producer (agent) must specify the following:

- The lines of authority for which the producer may represent the company;
- Duties, responsibilities, and limitations of authority between the producer and the insurer.

The appointing insurer and the appointed producer must maintain a copy of the agency contract. Prior to executing an agency contract, the insurer must determine that the producer is properly licensed with authority for the kinds of insurance described in the contract. The insurer cannot accept any business that was produced before the individual was licensed.

Filing an agency contract means that the producer is that company's producer for all kinds of insurance for which both the company and the producer hold a license. While the producer is licensed, any agency appointment continues in effect until termination.

Any insurance company appointing an agent by contract shall file with the Department a notice of appointment. Notice must be filed within **15 days** after execution of the contract, and must contain the company's name and reference number, the producer's name and reference number, and the effective date of the contract.

If an insurer cancels an agency contract, it must notify the Commissioner **in writing within 15 days**. Failure to do so will imply that an agency contract still exists. Appointing companies must file with the Commissioner a notice of appointment, providing the names of their producers and their addresses.

An insurance producer or limited insurance representative must reply in writing to any Department inquiry within 15 days. Claims and estimated losses must be reported by property/casualty insurance producers no later than **five business days** following receipt of notice of claim, unless the producer is authorized to settle the claim.

## **PRODUCER EMPLOYING ANOTHER PRODUCER**

In the event that an insurance company gives its general agents authority to hire producers to work for the general agent, New Jersey law specifies what must be in place for one producer (acting as an employer) to employ another producer (acting as an employee).

The employment of one producer by another is subject to the following requirements:

- A written contract must specify the actual relationship between the producers, and a copy must be sent to the Department of Banking and Insurance;
- The employee may execute contracts in the name of the employer only if authorized by the employer and any insurer involved;
- Employers are responsible for the insurance-related conduct of their employees; and
- Existence of a business relationship between two producers in which neither is the employee of the other does not require a written filing to the Department of Banking and Insurance; nor does it create any responsibility to each other for one another's actions.

## **PRODUCER SUBSTITUTING FOR OR TAKING OVER THE BUSINESS OF A DISABLED/DECEASED PRODUCER**

The death or disability of a producer can leave his or her clients without service on their policies. As a solution to this potential problem, some producers enter into an agreement for someone to step in and service their clients until other, more permanent, arrangements can be made.

A surviving spouse, next-of-kin, or administrator of the estate (in the event of the death of the producer), or legal guardian (in the case of disability) may maintain and continue the producer's insurance business only by entering into a written agreement with another licensed producer who has authority in the appropriate lines of insurance (in which case, the licensed producer is responsible for all insurance-related activity of the business).

The licensed producer who continues the business of a deceased or disabled producer (and receives a portion of the fees and commissions) is subject to the following requirements:

- The agreement cannot exceed **180 days**;
- The new producer must immediately notify the department, in writing, of this contact;
- The contract must contain the particulars of the parties involved, including the producer's reference numbers, the date of death or disability, term of contract, etc.;
- The written notice, which must be signed by the producer and filed with the Department of Banking and Insurance, must also include the deceased or disabled producer's license for cancellation; and
- The producer must notify the Department when the contract has terminated.

## **MAINTENANCE AND DURATION OF LICENSE**

### **RENEWAL**

Producer licenses are valid for **2 years**. Licenses will expire on the last day of the producer's month of birth. A renewal license will be issued after a renewal application has been submitted by the producer, along with payment of any required license renewal fees. Applicants for an individual producer license must also submit **proof of completing 24 hours of approved continuing education credits during the previous 2 years**, with 3 of those hours in courses related to professional ethics.

To renew a producer license, the producer must, at least **10 days** before the expiration date, submit a completed renewal application with the renewal fee and a certification signed by the producer, stating that he or she continues to qualify for a license in accordance with the New Jersey law. Failure to submit the renewal application by the expiration date will cause the license to expire.

Any licensee not wishing to renew his or her license should notify the Department by writing "do not renew" on the face of the renewal application.

**Nonresident producers** who satisfy CE requirements in their home state are not required to complete CE requirements in New Jersey if their home state recognizes the satisfaction of continuing education requirements on the same basis.

If an applicant's license has lapsed within the past year, the applicant may apply for late renewal of the license within **1 year** of expiration.

The application must include proof of completing **24 hours of continuing education**, a late renewal fee of \$100, and the applicant's certification, which must state whether or not the applicant has transacted any business as an insurance producer during the unlicensed period and, if so, the number of policies written. An applicant who files a late renewal within one year of license



expiration will be granted a waiver from prelicensing education and examination requirements.

A licensed producer may request a waiver of license renewal requirements if he or she is unable to comply with renewal procedures due to military service or other extenuating circumstances, such as a long-term medical disability.

In these cases, the producer may also request a waiver of any examination requirement or fines or sanctions associated with the failure to comply with standard renewal procedures.

## **CERTIFICATION OF LICENSE STATUS**

When requested by any person, the Department will issue a **certification of license status** of any currently licensed producer or producer licensed within the past 4 years. The certification must contain the following:

- Licensee's name, date of birth, license reference number;
- Statement whether the license is in force or expired;
- Kinds of insurance for which the person is authorized; and
- Whether he or she has qualified for licensing by examination or the equivalent, and whether any formal disciplinary act was taken during the last 4 years.

## **NONPUBLIC RECORDS**

The following types of information about licensed producers are nonpublic records under New Jersey law:

- Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of conviction of a crime
- Criminal history records obtained as the result of any criminal history check
- Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of unworthiness
- Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of unworthiness
- Records concerning the medical disability of any licensee
- Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken (11:17-2.15.b)

## **LICENSE REFUSAL / TERMINATION**

### **DENIAL**

The Commissioner has the power to deny the issuance or renewal of a license to anyone, within 30 days, based on information contained in that person's application, attached documents, and department records. When denying a license, the Department must specify the reason(s) and advise the applicant of his or her right to request a hearing.

If a hearing is requested, the Department will review the application and any additional information and determine whether the license may be issued. If the Department determines that the applicant is not qualified, the matter becomes a contested case and must be sent to the Office of Administrative Law for a hearing.

### **CANCELLATION / REINSTATEMENT**

A licensee may terminate a current license at any time by returning the license to the Department for cancellation. The Department may refuse to accept the cancellation request for a producer organization unless all currently licensed officers or partners consent to the request.

A license may be reinstated after cancellation (during the same license period) if the ex-producer completes an application and pays a processing fee. It is not necessary to pay a full licensing fee in the case of reinstatement.

A producer cannot avoid a disciplinary hearing or penalty by submitting his or her license for cancellation; the disciplinary action will continue.

### **REVOCACTION / SUSPENSION**

In addition to any applicable fines and penalties, the Commissioner may revoke, suspend, refuse to issue, or refuse to renew a license for any of the following reasons:

- Willfully violating any provision of the insurance code;
- Intentionally withholding material information in the license application;
- Attempting to obtain a license by fraud;
- Committing any fraudulent act;
- Misappropriating funds belonging to insureds or insurers;
- Using license to write **controlled business** in any 12-month period;
- Materially misrepresenting the conditions of a policy to the public;
- Paying a rebate to induce business;
- Aiding or abetting another producer in violating any New Jersey insurance law;
- Being convicted of a crime involving moral turpitude;
- Failing to file or maintain with the Department an accurate business address and list of licensed employees;
- Failing to pay a fine imposed by the Commissioner;
- Failing to appear in response to a subpoena issued by the Commissioner;

- Failing to maintain records required by New Jersey insurance laws;
- Failing to notify the Commissioner within 30 days of a conviction of a crime, indictment, or filing of a formal charge;
- Failing to possess cash and accounts receivable for insurance premiums in excess of amounts payable by the producer for insurance premiums NOT to exceed 120 days.
- Collecting a fee, other than commissions, from prospective insured for acting as an agent, unless the producer also holds a consultant's license;
- Failing to comply with standards and practices established by statutory insurance mechanisms; and
- Demonstrating a lack of integrity or financial responsibility.

No one whose license has been revoked can act as a partner or officer in a producer organization or work in any capacity with a licensed producer.

Failure to maintain a bond in full force will void the authority to act as a surplus lines producer after the bond expires or is cancelled.

All licenses are the property of the State of New Jersey and upon suspension, revocation, or expiration must be returned to the Department.

In cases where a producer's license has been revoked, the producer must wait **5 years** before applying for reinstatement. Along with the application, the individual must submit an affidavit that describes how his or her competence, trustworthiness, reputation, and character have improved during the revocation period. The Commissioner will review the application and determine whether or not reinstatement is warranted.

## TRADE PRACTICES

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### PROHIBITED PRACTICES

Unfair Trade Practice laws were developed in order to protect the insuring public from deceptive or misleading practices.

### MISREPRESENTATION

It is illegal to issue, publish or circulate any illustration or sales material that is false, misleading or deceptive as to policy benefits or terms, the payment of dividends, etc. This also refers to oral statements. Committing this illegal act is called **misrepresentation**.

### "TWISTING" - PROHIBITED

No person shall make any misleading representations or incomplete or **fraudulent comparison of any insurance policies or annuity contracts or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, or convert any**

**insurance policy or annuity contract, or to take out a policy of insurance or annuity contract in *another insurer*.** This illegal practice is known as "twisting." (11:17A-2.8; 17B:30-6)

## **FALSE ADVERTISING**

Advertising covers a wide scope of communication, from publishing an ad in a newspaper or magazine, to broadcasting a commercial on television. Advertisements cannot include any untrue, deceptive, or misleading statements that apply to the business of insurance or anyone who conducts it. The violation of this rule is called **false advertising**.

It is prohibited to advertise or circulate any materials that are untrue, deceptive, or misleading. Specifically, false or deceptive advertising includes:

- Misrepresenting the terms, benefits, conditions, or advantages of any insurance policy;
- Misrepresenting any dividends to be received from the policy, or previously paid out;
- Misrepresenting the financial condition of any person or the insurance company;
- Using names or titles that have tendency to misrepresent the true nature of a policy;
- Misrepresenting the true purpose of an assignment or loan against a policy; and
- Misrepresenting an insurance policy as a share of stock.

## **DEFAMATION**

**Defamation** occurs when an oral or written statement is made that is intended to injure a person engaged in the insurance business. This also applies to statements that are maliciously critical of the financial condition of any person or a company.

## **BOYCOTT, COERCION, INTIMIDATION**

It is illegal to be involved in any activity of boycott, coercion, or intimidation that is intended to restrict fair trade or to create a monopoly.

## **FALSE FINANCIAL STATEMENTS**

**False financial statements** are those that are intended to deceive public officials or the general public about the financial condition of an insurer. This often occurs when an important fact about the financial status of an insurer is deliberately withheld in order to put the company in a more favorable light.

## **UNFAIR DISCRIMINATION**

**Discrimination** in rates, premiums, policy benefits, etc. for persons within the same class or with the same life expectancy is illegal. No discrimination may be made on the basis of marital status of an individual, race, color, national origin, creed, or ancestry unless the distinction is made for a business purpose or required by law.

## REBATING

**Rebating** is defined as any inducement offered in the sale of insurance products that is not specified in the policy, greater than **\$25**. Rebates include money, reductions in commissions, stocks, bonds, securities and their dividends or profits, special favors or advantages in benefits, and personal services. Both the offer and acceptance of a rebate are illegal. The receipts for anything – like a keychain, etc., must be kept for five years.

## RECEIPTS

A receipt shall be given for each premium, premium deposit, or installment payment made in person, or when a receipt is requested, and the producer shall retain a copy. Receipts shall be sequentially numbered and signed by the producer. Each receipt shall indicate the name of the insured, insurer, agency, type of coverage, date of transaction, amount of remittance, and purpose of payment if other than premium payment. Completed receipt books must be retained for **five years** at the business address of the producer with the Department. (11:17C-2.4)

## UNFAIR CLAIM SETTLEMENT PRACTICES

Any of the following acts by an insurer, if committed without just cause and not merely inadvertently or accidentally, shall constitute **unfair claim settlement practices**:

- Knowingly misrepresenting to claimants or insureds pertinent facts or policy provisions relating to coverages at issue;
- Failing to acknowledge and act promptly upon communications with respect to claims arising under insurance policies;
- Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- Not attempting in good faith to effectuate prompt, fair and equitable settlements or compromises of claims in which liability has become reasonably clear;
- Compelling claimants to institute litigation to recover amounts due under insurance policies by offering substantially less than the amounts ultimately recovered in actions brought by them;
- Adopting or making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amounts awarded in arbitration;
- Attempting settlement or compromise for less than the amount which the insured had been led to believe the insured was entitled to by written or printed advertising material accompanying or made part of an application;
- Attempting settlement or compromise of a claim on the basis of an application which was altered without notice to, or knowledge or consent of the insured;
- Attempting to delay the investigation or payment of claims by requiring an insured and the insured's physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

- Making any claim payment not accompanied by a statement setting forth the benefits included within the claim payment;
- Failing to affirm or deny coverage of claims within a reasonable time after proof of loss forms have been submitted;
- Refusing payment of a claim solely on the basis of an insured's request to do so without making an independent evaluation of the insured's liability based upon all available information;
- Failing to promptly provide a reasonable explanation for the denial of a claim.

## **FAILURE TO MAINTAIN COMPLAINT HANDLING PROCEDURES**

**Failure to maintain a complaint handling procedures** is considered a prohibited trade practice. Insurers must maintain a complete record of all complaints they receive, which indicates the total number of complaints, line of insurance and nature of each complaint, action taken and the time it took to process each complaint. The term "complaint" refers to any written communication expressing a grievance.

## **LICENSING RESPONSIBILITIES (REPORTING INFORMATION TO THE DEPARTMENT OF BANKING AND INSURANCE)**

### **BUSINESS NAMES (INCLUDING FICTITIOUS)**

A **business name** is the legal name of a corporation or partnership or any trade or fictitious name under which a licensee conducts insurance business. If you use a fictitious name, you must file a certified copy of the fictitious name issued by the secretary of state/county clerk.

A resident licensed producer cannot conduct insurance business under a name other than its actual name, unless the name has been filed with the Department. A nonresident licensed producer cannot conduct business under a name other than its legal name in the state where it maintains a residence.

A business name cannot have the tendency to be misleading or deceptive. The name cannot be identical or confusingly similar to the business name of another currently licensed resident producer.

A person transacting business under its true legal name may also use the words "**agency**" or "**insurance agency**" without having to file a fictitious trade name.

No producer shall file or use a name containing the words "**insurance**," "**insurance company**," "**guaranty**," "**guarantee**," "**guaranty company**," "**guarantee company**" or similar words unless the word "**agent**," "**agency**," "**broker**," "**brokerage**" or a word of similar importance is also used to distinguish the business from an insurance company. (17:22A-12)

## **BRANCH OFFICES**

A **branch office** is an office in New Jersey other than a principal office where a resident licensee conducts insurance business. Licensees must register with the Commissioner to obtain a branch office certificate that allows the sale of insurance at that location only. Licensees must file with the Department a branch office registration form within **30 days** before business is first conducted there. This certificate expires at the same time as the producer's own license.

The licensee must advise the Department in writing of the closing of any branch office within **30 calendar days** of the closing, and return the branch office certificate at that time. No branch office may be opened unless at least one licensed insurance producer is assigned permanently and exclusively to that office during normal working hours. The office must be open to the public during hours and days of the week that would provide **reasonable access to the office for the public**. The branch office hours of operation must be clearly posted to inform the public. No branch office may engage in insurance related conduct unless a licensed insurance producer is present.

## **CHANGE OF ADDRESS**

All licensees must provide the Department with a current mailing address. They must notify the Department within **30 days** of any change of address. This may be done electronically. Copies should be kept on file for 5 years or until documentation of the change from the department is received.

## **STANDARD OF CONDUCT**

### **MARKETING**

**Disclosure of personal or privileged information:** Producers are prohibited from disclosing personal or privileged information about an individual received in connection with an insurance transaction.

**Delivery of policy:** All policies, certificates or other evidence of insurance that are received by an insurance producer must be delivered or mailed to the insured within 10 calendar days of the receipt by the producer. The producer can only retain a policy for a longer period of time if agreed to in writing by the insured.

**Replies to inquiries by the Commissioner:** A producer has 15 calendar days to reply in writing to any inquiry of the Department related to the business insurance.

**Reporting of claims:** Claims must be reported to the insurer no later than 5 business days after the receipt of notice of claim by the producer.

## MANAGEMENT OF FUNDS

**Commingling of funds:** All premiums collected on insurance policies must be held by a producer in a fiduciary capacity and must not be misappropriated, illegally withheld or improperly converted to the producer's own funds.

**Remittance standards:** All premiums must be remitted to the insurer within 5 **business days** after receipt of funds. All premiums due the insured must also be paid to the insured or credited to the insured's account within 5 business days.

**Record maintenance:** All required books and records of each account must be maintained for a period of 5 **years** after the termination of coverage.

## ***GUARANTY ASSOCIATIONS***

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The **New Jersey Life and Health Guaranty Association** was created to protect policyowners, insureds, and beneficiaries under life insurance policies, health insurance policies, annuity contracts, and supplemental contracts when insurers fail to perform contractual obligations due to financial impairment. The Association is **funded by its members**, or all authorized insurers that are required to be members of the Association and contribute to a fund to provide for the payment of claims for insolvent insurers. For the purpose of administration and assessments, the Guaranty Association maintains two accounts: the life insurance and annuity account, and the health insurance account.

The Association will cover claims of beneficiaries, assignees, or payees of covered persons.

Generally, covered persons are owners of policies or contracts who are residents of New Jersey, or who are nonresidents if:

- The insurer that issued the policy is domiciled in New Jersey;
- The other state has a similar guaranty association; or
- The person is not eligible for coverage provided by that other association.

The Association may guarantee or require an impaired insurer's covered policies; provide money, pledges, guarantees, or loan money to the impaired insurer; and assume payment of the impaired insurer's contractual obligations. The Association may also impose policy liens, contract liens, and moratoriums on payments, as necessary.

The Association's liability is generally limited to the contract obligations of the impaired insurer. However, the maximum liability of the Association for any one insured individual will not exceed **\$500,000** in life insurance death benefits or present value annuity benefits, or **\$100,000** in net surrender or withdrawal values under life insurance or annuity contracts, or **\$2,000,000** for all benefits under any unallocated annuity contract.



## CONTRACTS

Insurance contracts have unique features sometimes not found in other types of contracts. An insurance contract is considered an Aleatory, Adhesion and Unilateral contract.

**ALEATORY:** An insurance contract is an Aleatory contract, which means that performance depends upon the occurrence of an uncertain event. Due to the nature of the contract, each party must give and receive value. The insured who collects for a loss may receive more than the premiums paid, while an insured who never suffers a loss receives only an intangible security.

**ADHESION:** An insurance contract is also an adhesion contract, which means terms are drawn up by the insurer and the insured has no choice if he or she wants the contract but to adhere to the terms. Any ambiguity must be interpreted in favor of the insured, for the insured had no control over the terms of the contract.

**UNILATERAL:** Under a bilateral contract, a promise is exchanged for another promise and both parties may execute their obligation in the future. Under a unilateral contract, an act is exchanged for a promise. Once the insured pays the premium, only the insurer makes promises about the future performances.

**IN ORDER FOR A CONTRACT TO BE VALID FOUR ESSENTIAL ELEMENTS MUST BE PRESENT. THEY ARE AS FOLLOWS:**

- **CONSIDERATION**
- **LEGAL PURPOSE (KNOWN AS CLOC)**
- **OFFER AND ACCEPTANCE**
- **COMPETENT PARTIES**

**THE THREE ELEMENTS OF A CONTRACT ARE AS FOLLOWS:**

- **INSURING AGREEMENT**
- **CONDITIONS (KNOWN AS ICE)**
- **EXCLUSIONS**

**THE FOUR ELEMENTS THAT MAKE THE CONTRACT AN INSURANCE POLICY ARE AS FOLLOWS:**

- **DECLARATION**
- **INSURING AGREEMENT (KNOWN AS DICE)**
- **CONDITIONS**
- **EXCLUSIONS**

*By adding a "d" to ice we made the insurance contract into an insurance policy.*

## FRAUD

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The following are considered violations of the New Jersey Insurance Fraud Prevention Act:

- Presenting or causing to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim;
- Preparing or making any written or oral statement intended to be presented to any insurance company, the Unsatisfied Claim and Judgment Fund or any claimant thereof in connection with, or in support of or opposition to any claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim;
- Concealing or knowingly failing to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to any insurance benefit or payment or the amount of any benefit or payment to which the person is entitled;
- Preparing or making any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining a motor vehicle insurance policy, stating that the person to be insured maintains a principal residence in this State when, in fact, that person's principal residence is in another state;
- Preparing or making any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract;
- Concealing or knowingly failing to disclose any evidence, written or oral, which may be relevant to a finding that a violation of the provisions has or has not occurred.
- Knowingly assisting, conspiring with, or urging any person or practitioner to violate any of the provisions of this act;
- Knowingly benefiting, directly or indirectly, from the proceeds derived from a violation of this act, due to the assistance, conspiracy or urging of any person;
- For an owner, administrator or employee of any hospital, knowingly allowing the use of the hospital facilities by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this act;
- Directly or indirectly soliciting a person to engage, employ, or retain him/herself or any other person to manage, adjust, or prosecute any claim or cause of action against a person for damages for negligence or for pecuniary gain;
- Directly or indirectly soliciting other persons to bring causes of action to recover damages for personal injuries or death, or for pecuniary gain; or
- Directly or indirectly soliciting other persons to make a claim for personal injury protection benefits.

The penalty for violation the New Jersey Insurance Fraud Prevention Act is no more than \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for each subsequent violation.

## NUMBERS, DOLLARS, DAYS, AND DATES

In order to perform your best on the state regulations portion of the exam, make sure you memorize these numbers and their definitions.

<b><u>Department of Insurance Regulations:</u></b>	
10 days	Notice to charged person before disciplinary hearing
<b>Licensing and Appointment Requirements:</b>	
18	Age to apply for license
20 hours	Total preclicensing required for each line of authority
60 days	Temporary work authority valid
180 days	Temporary license valid
24 hours	CE required every 2 years
3 hours	CE hours that must be in Professional Ethics
10 days	Before license expiration, producer must submit renewal application
1 year	To renew lapsed license without taking written exam
2 years	To apply for license after completing preclicensing education
1 year	To apply for license after passing licensing examination
20 days	For nonresident licensee to notify Department of intent to qualify as resident
90 days	Education waiver for new resident with valid nonresident license
5 years	Before producer with revoked license can apply for reinstatement
<b><u>Miscellaneous Producer Regulations:</u></b>	
30 days	To report change of mailing address or of business address or name
15 days	For insurers to notify Commissioner of canceled agency contract
30 days	To report the opening or closing of a branch office
5 business days	For premiums to be remitted to the insurer or to the insured
5 days	Producer must report claims to the insurer after receipt of notice of claim
10 calendar days	Producer must deliver policies to the insured after receiving them
15 calendar days	Producer must reply in writing to inquiries from the Commissioner
5 years	Keep records of financial transactions after termination of coverage
<b><u>Important Dollar Amounts:</u></b>	
\$1,000	Fine per violation for unintentional violations of insurance laws
\$5,000	Fine per violation for willful violations of insurance laws
\$5,000	Fine for each violation of cease and desist orders
\$5,000	Fine for first violation of an insurance law
\$5,000	Fine for failing or refusing to comply with a subpoena
\$10,000	Fine for subsequent violations of an insurance law
\$15,000	Maximum fine for first violation of the New Jersey Insurance Fraud Prevention Act