

## 1.0 Insurance Regulation 15% of the test

### 1.1 LICENSING

The process of licensing in Pennsylvania is highly regulated. The Pennsylvania Department of Insurance supervises the process. You are about to find out exactly how complex this is. Don't worry. After we get past all the insurance regulation detail, you will start to see things that are more familiar.

Licensing is dealt with in 40 P.S. 310.1 et seq. There are a few defined terms that must be grasped to comprehend the regulatory pattern.

- a. "Appointment." A written agreement between an insurance producer and an insurance entity under which the insurance producer may sell, solicit or negotiate contracts of insurance issued by the insurance entity for compensation.
- b. "Business entity." A person which is not an individual.
- c. "Insurance Producer." A person that sells, solicits or negotiates contracts of insurance.
- d. "Line of authority." The licensed ability to sell, solicit or negotiate particular classes or types of insurance

With these definitions in mind, here is what we will cover in this chapter:

- Individual and business licenses for residents and nonresidents
- Renewals of licenses
- What happens if a licensee dies
- Prohibited acts
- Special provisions for title agents
- Appointment Procedures
- Maintaining a license
- Disciplinary Actions

#### A. Process

Any person, natural or corporate, who desires to be an [Insurance Producer](#) is required to be licensed in Pennsylvania. Pennsylvania allows individuals and entities to be licensed if they are resident in the Commonwealth or non-resident. The process includes an application and a fee.

#### B. Persons to be licensed

- 1) **General Requirements** All individuals and entities must comply with the provisions of 40 P.S. 310.5 – 310.12. These provisions apply equally to resident and non-resident licenses.
  - a) **Applications for insurance producer licenses.**
    - i) **Individuals** Pennsylvania requires four things of individual licensee applicants:
      - (1) A completed application indicating [lines of authority](#).
      - (2) Fingerprints
      - (3) Documentation that the applicant has passed or it exempt from the insurance producer licensing examination.
      - (4) The license fee and the fee for obtaining national criminal history records information

- ii) **Business Entities** A business entity must first have one or more individuals licensed under the act. The individual licensee shall be responsible for the entity's compliance with the insurance laws and regulations. The business entity may only apply for an insurance producer license for the same lines of authority as the individual licensee. There are three requirements for entity applications:
  - (1) A completed application indicating [lines of authority](#).
  - (2) Proof of license for individual licensee.
  - (3) The license fee.

b) **Licensing**

- i) **Individual Applicants** Individuals residing in PA apply for resident insurance producer license. Individuals who live outside Pa may apply for a non-resident insurance producer license. An individual must meet these requirements:
  - (1) Be at least 18 years of age
  - (2) Have not committed any [act prohibited](#) under the Insurance Law
  - (3) Satisfied the pre-exam education requirements
  - (4) Passed or exempt from the exam.
  - (5) Paid all fees
  - (6) Possess general fitness. General fitness is a character that will command the confidence of the public and warrant the belief that the person will act honestly and efficiently.
- ii) **Business Entities.** A business with an office in PA will apply for a resident insurance producer license. A business that does not have an office in PA may apply for a non-resident insurance producer license. A Business must meet these requirements:
  - (1) Have one or more designated licensees.
  - (2) Designated licensees must be in good standing.
  - (3) Business must have the same lines of authority as the designated licensees.
  - (4) Entity cannot have committed a [prohibited act](#).
  - (5) Entity is owned, operated and managed by persons having general fitness.
  - (6) Paid all fees.
  - (7) Any other criteria established by the Department.

<p><b>FEES</b></p> <p>Residents \$55.00</p> <p>Non-Residents \$110.00</p>
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- c) **Change of Home State** A non-resident agent may apply to become a resident agent if such person or entity establishes a principal residence or place of business in PA. The application shall be submitted within 90 days of establishing a place of residence or place of business in PA. The application must 1) list the lines of authority for which an individual desires to be licensed, 2) proof of licensing for the lines in the former home state, and 3) the fee. The department reviews 6 criteria:
  - i) The individual holds a current license in the former home state and has applied with 90 of relocation to PA.
  - ii) The application is for equivalent lines of authority.
  - iii) The individual has not committed any [prohibited act](#).
  - iv) All fees have been paid
  - v) The individual was: 1) issued a letter of clearance from the former home state; 2) was licensed in good standing at the time of cancellation; and 3) is recorded as being licensed for the lines of authority in the former state records or NAIC.
  - vi) Any other requirement the department establishes.
- d) **Term of License** The license will be issued only in the name of the applicant or business entity. (If the entity uses a fictitious name, the Department must be notified prior to use.) Licenses are non-transferable, list the lines of authority, can be paper or electronic and cannot exceed two years.

Prohibited Acts:

1. Providing false information;
2. Violate insurance laws of any state
3. Attempt to obtain a license by misrepresentation
4. Improperly withhold or convert money
5. Misrepresent proposed insurance
6. Unfair insurance or Fraud
7. Dishonesty or financial irresponsibility
8. Insurance of Financial license suspended
9. Forgery
10. Cheat on exam
11. Accept business solicited by non-licensee
12. Fail to pay child support
13. Fail to pay income tax
14. Commit felony
15. Misdemeanor involving money
16. Violate Sub-article B
17. Breach of fiduciary duty
18. Move insurance between companies
19. Fail to notify of change of address
20. Lack of general fitness

e) **Renewals** As a general rule, licenses are renewed every two years.

- i) Each licensee must complete 24 credit hours of CE for each 2 year period.
- ii) Exemptions from CE Requirement:
  - (1) Person continuously licensed since before January 1, 1971;
  - (2) Entity licensee;
  - (3) Licensee with limited line (not limited to title insurance)
  - (4) Licensee limited to restricted fraternal line;
  - (5) Licensees limited to credit insurance if insurer provides course;
  - (6) Non-Resident licensee who satisfies his or her state requirement if that state recognizes local satisfaction by satisfaction of PA requirement;
  - (7) Licensee limited to domestic mutual fire insurance.
- iii) Lapses: Caused by failure to renew, failure to pay or failure to complete CE requirement.
  - (1) If reinstatement requested within 60 days, reinstatement is retroactive
  - (2) If reinstatement is requested after 60 days, reinstatement is prospective, although waivers may be requested.
- iv) Renewal fees:
  - (1) Resident \$55
  - (2) Nonresident \$110
  - (3) Lapsed license \$165

f) **Temporary Licensing** Under certain circumstances the Insurance Department may issue a temporary license for up to 180 days. These licenses may be revoked without notice.

- i) Death or Disability of Licensee. The surviving spouse or court appointed personal rep may be issued a temporary license until:
  - (1) Business sold
  - (2) Licensee recovers
  - (3) A new person is trained and licensed.
- ii) Business Entities An owner, partner or employee may be licensed if the individual licensee dies or is disabled until:
  - (1) Business sold
  - (2) A new person is trained and licensed.
- iii) If a person enters the armed forces they may designate a temporary licensee.
- iv) Under extenuating circumstance, if in the public interest a temporary license may be issued.

g) **Reciprocal Licensing** Persons and entities, licensed in other states may seek reciprocal licenses.

- i) Nonresident individuals. If a person is licensed, as a resident licensee, in another state, that person may apply for a PA license for the same lines.
- ii) Nonresident business. If it first designates an individual licensee, if an entity is licensed as a resident insurance producer in another state, they may also be licensed in PA.

h) **Prohibited Acts** The law provides a list of 20 prohibited acts. This list is referred to throughout the laws applicable to licensees.

- (1) **Provide incorrect, misleading, incomplete or false information to the department in a license application.** This section is the focus of significant enforcement activity. For example, some applicants assume old criminal records have been expunged or have otherwise become obsolete. Others neglect to mention discipline that has been directed to them in connection with other licenses, or in other states or countries. An applicant needs to fully and truthfully answer all questions.
- (2) **Violate the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state's insurance commissioner.** This is a catch-all provision that sweeps in any improper activity in this or any other state, even if it is not in the 20 listed prohibited acts.
- (3) **Obtain or attempt to obtain a license through misrepresentation or fraud.** This prohibition is coupled with item one. Any misrepresentation, whether fraudulent, negligent or innocent on an application of in the process of applying for an application is prohibited. This not only includes misrepresentations on applications, it also applies to conduct during exams, evidence of appointment or any other conduct.
- (4) **Improperly withhold, misappropriate or convert money or property received in the course of doing business.** Fidelity in the handling of money or the property of others is a non-negotiable issue to the Department.
- (5) **Intentionally misrepresent the terms of an actual or proposed insurance contract or application for insurance.** The Insurance Department takes seriously the representations made in selling insurance. While the provision does not include negligent or innocent misrepresentations, the fine line between types of misrepresentations makes it critical to carefully explain insurance coverage to consumers. In the title field this issue becomes acute when discussing the difference between standard insurance and enhanced coverage, and in the explanation of endorsements.
- (6) **Admit to or been found to have committed any unfair insurance practice or fraud.** Generally speaking, unfair insurance practices are usually determined by the Insurance Department after a hearing. Fraud, on the other hand, could be determined in simple civil litigation and a summary of the case reported to the Department.
- (7) **Use fraudulent, coercive or dishonest practices or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere.** In the case of a life insurance agent who was understood by two insurance companies to be an exclusive employee, the Commonwealth Court found that deceiving the companies and preparing an insurance application without the knowledge of the insured were evidence of violation of this provision.
- (8) **Have an insurance producer license or other financial services license, or its equivalent, denied, suspended or revoked by a governmental entity.** Many insurance agents have licenses in multiple states. Some also have securities licenses. This provision essentially provides that a suspension, denial or revocation of a license anywhere will trigger a reciprocal response in PA.

- (9) **Forge another person's name on an application for insurance or on any document related to an insurance or financial service transaction.** In the world of title insurance, it is not likely that anyone will see an application for insurance. However, forging another person's name on a HUD-1, deed, affidavit, loan document, payoff or any other document is a violation.
- (10) **Cheat on an examination for an insurance producer license.** This should be self-explanatory.
- (11) **Knowingly accept insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer.** As you can see this provision, if read literally, requires sales persons to be licensed.
- (12) **Fail to comply with an administrative or court order imposing a child support obligation.**
- (13) **Fail to pay State income tax or comply with any administrative or court order directing the payment of State income tax.**
- (14) **Commit a felony or its equivalent.**
- (15) **Commit a misdemeanor that involves the misuse or theft of money or property belonging to another person.**
- (16) **Commit a violation of Sub-article B.** This list of 20 prohibits is in Sub-article A, which deals with Licensing. Sub-article B Deals with regulating insurance Producers. We will discuss the list of Sub-article B prohibitions later in detail, but for now the list is the following 12 items, plus a few others relating to the payment and receipt of commissions:
- (a) Unlicensed activity
  - (b) Doing business with unlicensed producers
  - (c) Theft by producers
  - (d) Advertising as a producer of unauthorized entity
  - (e) Soliciting for nonexistent entity
  - (f) Giving Rebates
  - (g) Giving Inducements
  - (h) Misrepresenting policies or future dividends
  - (i) Misrepresentations to insured of another company
  - (j) Licensing of financial institutions as insurers
  - (k) Action by a financial institution to place requirements on a producer
  - (l) Conditional financial transactions (requiring insurance from a designated insurer or producer as a condition of a loan or deposit.
- (17) **Commit fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.** Notice the fraud and dishonesty work their way into many of the prohibitions. While the law generally imposes a high burden of proof on matters of fraud (clear and convincing evidence), the inclusion of dishonest acts lowers the bar considerably.
- (18) **Transfer insurance coverage to an insurer other than the insurer expressly chosen by the insured without the consent of the insured.** This does not play as large a role in title insurance, but that does not mean it is not applicable. If a commitment is issued on the paper of a company, a violation occurs if the policy is placed with another insurer.

- (19) **Fail to notify the department of a change of address within 30 days.**
- (20) **Demonstrate a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.** This type of provision is common in the law at the end a long lists. It is what is called a “catch all” provision. It gives the Department the opportunity to discipline a producer, even if the conduct of the producer is not found on a list of prohibitions.
- i) **Failure to respond or remit payment.** Discipline from the department does not begin without due process. The Department first sends a letter to the producer asking for an explanation of complaints made. The producer must reply within 30 days. If a producer does not reply in 30 days or timely pay all sums due to the Department within 15 days of a violation notice, the Department may impose a fine of up to \$100 per day per violation.

### 3. SPECIAL PROVISIONS FOR TITLE AGENTS

- i. **Definition of Title Agents:** A person or entity other than an employee of an insurer who determines insurability and issues title reports and policies based on performing a search or reviewing an search or abstract AND performs one or more of the following: 1) **deals in** premium, escrows of other **money**; 2) handles escrows, and **conducts closings**, 3) **solicits** and negotiates title insurance **business**, or 4) **records** closing **documents**.
- ii. **Additional Requirements** A Title Agent must possess a valid certificate from the Department and perform the acts listed under a written contract with a licensed title company.
- iii. **Title Agents Must have:**
1. E&O Insurance of at least \$250,000, with a deductible of less than \$25,000.
  2. A blanket fidelity bond covering all employees of at least \$150,000. Max deductible of 15% of face. This can be waived if the agency has no employees except owners. This bond is to protect the agency and underwriter from dishonest acts of employees.
  3. Surety bond of not less than \$100,000. This bond secures the performance of the agent and all of its fiduciary duties. While the bond runs to the benefit of the Department, it addresses losses usually suffered by insurance companies as a result of the breach of duties by agents. By way of example, the failure to pay off mortgages, failure to record deeds and mortgages, converting escrow funds or any other defalcation would fall into this category.
  4. Remit and Report to the insurer. This includes providing information about policies issued and remitting premium
  5. In a fiduciary capacity, collect and hold in a bank, all funds due to a title insurer
  6. Keep separate records for each insurer.

## QUIZ CHAPTER 1.1 A & B

1. An Insurance Appointment is:
  - a. A time to meet with the Insurance Department
  - b. A time to meet with a potential insurance customer.
  - c. A written contract between an insurance company and a person with a license
  - d. A line of authority to issue insurance.
2. A person who may sell, solicit or negotiate an insurance contract is:
  - a. An insurance agent.
  - b. An insurance company.
  - c. An insurance producer.
  - d. A general agent.
3. Who may not be licensed in PA
  - a. Non-resident individuals and companies
  - b. Individual residents of PA
  - c. Companies with offices outside PA and no individually licensed employees
  - d. Aliens
4. An individual Insurance Producer must meet all of the following except:
  - a. Pay a fee of \$250
  - b. Satisfy pre-exam education
  - c. Be at least 18
  - d. Have not committed a misdemeanor involving money.
5. A non-resident title insurance entity must have all the following except:
  - a. A bricks and mortar office in PA
  - b. A license in another state
  - c. A designated individual with an insurance producer licensee
  - d. A fidelity bond.
6. The following acts are all prohibited except:
  - a. Giving a family member a reduced rate for title insurance
  - b. Cheating on the exam
  - c. Signing the HUD-1 for a person who could not attend closing.
  - d. Using a handout you prepared to describe the enhanced policy.
7. If the Insurance Department sends a letter to a producer asking for information about a consumer complaint, the producer should:
  - a. Give the letter to management and forget about it.
  - b. Respond to the Department by calling within 60 days.
  - c. Call the consumer and straighten the problem out.
  - d. Respond to the Department in writing within 30 days.
8. Licenses are renewed:
  - a. Every two years.
  - b. On the anniversary of your birth
  - c. Every year
  - d. On the anniversary of the issuance of the license
9. The following acts are all prohibited except:
  - a. Hold on to an escrow of funds after a demand has been made to turn it over
  - b. Ignoring a child support order
  - c. Issuing a commitment on the paper of one underwriter and a policy on another underwriter.
  - d. Failing to pay state income tax
10. The failure to timely reply to the Department or timely pay all sums due to the Department can result in a fine of:
  - a. \$10 per day
  - b. \$250 per week
  - c. \$100 per day
  - d. Any amount the Department chooses
11. Which of the following must be kept in escrow?
  - a. The underwriter's share of premium
  - b. The recording fees
  - c. Real Estate Commissions
  - d. All the above
12. A Title Agent is a person who :
  - a. Deals in premium or money
  - b. Solicits business
  - c. Conducts closings
  - d. All the above

## ANSWERS

1. c. An Appointment is a written agreement between an insurance producer and an insurance entity under which the insurance producer may sell, solicit or negotiate contracts of insurance issued by the insurance entity for compensation. A Title Insurance Agent (or producer) cannot produce insurance unless they

have an appointment from at least one underwriter.

2. c. An Insurance Producer
3. c. All companies seeking a license must have one or more designated licensees with the same lines of authority as the company.
4. a. the fee is \$55 for residents and \$110 for non-residents.
5. a. there is no bricks and mortar requirement in PA. The company may be entirely out of state as long as it agrees to be subject to the jurisdiction of PA and appoint a person for acceptance of service in PA.
6. d. Using a handout you prepared to describe the enhanced policy. It is a violation to charge anyone less than the approved rate unless the underwriter files a rate deviation notice with the Department. A producer signing a HUD-1 for another person must have written authorization.
7. d. Respond to the Department in writing within 30 days. All complaints require a written response to enable the Department to appoint an investigator.
8. a. Every two years.
9. a. Hold on to an escrow of funds after a demand has been made to turn it over. An escrow must be held strictly in accord with the purpose. The mere fact that someone makes a demand is not the basis for changing the terms of the escrow agreement. The failure to pay child support obligations or state income tax will result in discipline from the Department.
10. c. \$100 per day. This is the maximum fine, per violation.
11. d. All the above. The underwriters share of premium is an escrow item. It should not be aggregated into the check used to pay the agency its portion of premium. While remittance from multiple files may be paid by a joined check, that check must come from an escrow account. Recording fees should go into a separate escrow account if you record electronically and allow a non-licensed company to initiate AFT transfers from your account. Real Estate Commissions are no different than any other item to be paid from the HUD-1 or Settlement Disclosure Statement.
12. d. All the above. Note that there are hundreds of people in the title insurance business that a) collect and disburse premium, b) handle escrows and closings, c) solicit business, and d) record documents. If a person does any of these things AND also does any of the following, they are a Title Agent required to be licensed: a) determine insurability, 2) issue title reports, or 3) issue title policies