

Pennsylvania's Producer Licensing Laws Significantly Change

Pennsylvania has enacted the Producer Licensing Modernization Act ("PLMA"), which makes various changes in the procedures for licensing and appointing insurance producers. This article highlights the more significant changes under the law, which becomes effective June 4, 2003.

Insurance Producers in Lieu of Agents and Brokers

The PLMA eliminates the existing distinctions in licensure requirements for "agents" and "brokers." Both agents and brokers now will be licensed as "insurance producers." The PLMA continues the previous requirement that both individuals and business entities obtain licenses.

Persons licensed as an insurance producer may function as either a representative of an insurer (f/k/a an "agent") or as representative of the consumer (f/k/a a "broker"). Producers representing an insurer must still be appointed by a written agreement with the carrier, and appointments must continue to be reported to the Insurance Department. However, unlike the previous law, an appointment from an insurer is no longer needed in order to initially secure a producer license.

An insurance producer acting on behalf of a consumer must execute a written agreement with the consumer prior to the commencement of the representation. The written agreement must delineate the services to be provided and completely disclose the fees charged to the consumer. If a producer has an appointment, the Department will regulate the producer as if she represents the insurer, even if the producer has contracted with the consumer for insurance services.

Who Must Be Licensed

Under the PLMA, persons that "sell," "solicit," or "negotiate" insurance must be licensed as a producer. "Selling" includes activities relating to the issuance of an insurance policy and the payment for such contract. "Soliciting" includes activities whereby a consumer is urged to apply for a particular kind of insurance from a particular insurer. "Negotiating" includes advice offered directly to a consumer relating to benefits, terms or conditions of a specific policy.

Officers, directors and employees of insurers that do not receive a commission for policies sold in Pennsylvania continue to be exempt from the licensing requirements. Additionally, company personnel can provide the following services without the need to obtain a license: responding to consumer inquiries (but no recommendation on specific coverages, products or rates may be provided); on-site assistance in the completion of applications; receiving requests for coverage; receiving premium payments and issuing receipts; and collecting expiration date information from consumers.

An exemption is newly added for producers writing multi-state commercial property and casualty risks. Now, the producer must be licensed only in the state where the account has its principal place of business, even if the policy covers locations in other states.

Commissions and Referral Fees

The PLMA continues to authorize the payment of commissions by insurers to licensed insurance producers. Under the new law, producers are expressly authorized to share commissions with other producers, as long as both are licensed for the line of business involved in the transaction.

Additionally, the PLMA permits the payment of referral fees to unlicensed persons, if the unlicensed person does not discuss specific policy terms and conditions with the consumer. Further, for personal lines, the referral fee must be a non-recurring, fixed fee of a nominal dollar amount, which fee is not dependent upon whether a sale is consummated.

Rebates and inducements continue to be prohibited.

Fingerprints

The PLMA newly imposes a fingerprinting requirement on all new applicants. Existing domestic agents and brokers must also submit fingerprints when they next renew their license.

Continuing Education

Twenty-four (24) hours of pre-licensing education is now required before an applicant is eligible to take the examination. The former requirement of 48 hours of continuing education during the first 2-year licensing period has been eliminated. Post-licensing continuing education remains at 24 hours during the biennial licensing cycle. Now, however, producers have until their license renewal date to obtain the required credit hours; previously, the credit hours had to be secured at least 60 days in advance of the licensing renewal date.

If a producer is licensed only for "limited lines" of authority, such as credit or automobile rental, the producer is exempt from the pre-licensing education and examination requirements.

Nonresident Licensing

The PLMA provides licensing reciprocity for nonresident producers. Producers outside of Pennsylvania can become licensed in the Commonwealth (for the same lines of authority) upon submission of an application and proof of current licensing in their home state. Nonresidents will not be subject to pre-licensing education, examination or fingerprint requirements when applying in Pennsylvania.

Licensing Verification

The Insurance Department is ceasing its practice of sending monthly appointment activity reports to insurers. Rather, the Department will post appointments in a secure location on its web-site, and each insurer will need to periodically verify that its appointments and terminations are accurately reflected in the Department's files.

Licensing and Appointment Fees

The fee for a domestic producer license is \$55 for the biennial licensing period. The PLMA eliminates the retaliatory fee structure for nonresident producers. The license fee for nonresidents is now \$110, regardless of their state of domicile.

Appointment fees are raised under the PLMA. In its annual billing, the Department will now charge \$12.50 per producer (the fee had been \$9.00 per year). Additionally, the annual fee will no longer be pro rated regardless of whether the producer was appointed for only a portion of the calendar year.

Conclusion

Referred to as Act 147 of 2002, the PLMA will be codified at 40 P.S. §310.1 et seq. The PLMA is designed to modernize and streamline the producer licensing process, for the Department, insurers and producers alike. The new law makes numerous changes in the applicable procedures, only some of which are highlighted herein. For example, Saul Ewing previously has released a Client Update on the new requirements relating to producer terminations. For further information on the PLMA, please contact one of the attorneys in the Saul Ewing Insurance Practice group.

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