



# **Ethics and Beyond**

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## Chapter One: Ethics and Agent Relationships

“Ethics” are a body of moral principals. In the insurance profession, these moral principals are developed and impacted by legislation, by those in the profession, and by the standards and beliefs of the individual agent. The effects of the moral or ethical decisions made by the agent are felt by many: the public, the insurer the agent represents, the agent’s customers, insurance regulators, the agent’s competition, and the agent’s coworkers.

### The Public

An agent’s actions have an impact on the public because (1) the agent represents the insurance industry to the public, and (2) the positive or negative results of an agent’s actions may be felt by others in the public besides policyholders.

### Representatives of the Insurance Industry

The public perception of insurance is largely built by the actions of the insurers and agents within the industry. If either one of these parties behaves unethically, the general public is more likely to view other insurance agents and insurers as lacking ethics.

Insurers may negatively impact public perception through financial instability, false advertising, or not meeting the real and perceived obligations of the policies they issue. When a major insurer is found to have a problem in one of these areas, the national and local media are likely to announce the insurer’s problems on television, magazines and newspapers. The general public then grows more wary of insurers and their products.

**Solicitation and Sales.** The agent can negatively impact public perception through improper solicitation and selling practices. The pushy insurance agent has become a running joke on television, movies and comic strips. According to the humorists, there is no worse fate than being stuck in an elevator with an insurance salesman, or marrying into a family with one. Part of the public has the impression that insurance agents are unrelenting in their pursuit of sales. Although the insurance agent of today behaves much differently than this stereotype, the fact that this perception exists is an example of how sales tactics of past agents has impacted public opinion about the industry.

By genuinely seeking to serve the public, an insurance agent helps to break such stereotypes. Using reasonable, non-threatening prospecting methods, performing thorough needs analyses and staying away from high-pressure sales tactics are the best ways an agent can best serve both the insurance industry and the public.

**Competence.** Unethical prospecting or sales methods can result from a lack of knowledge or due to misunderstanding a product's features and uses. Agents must be careful to study and understand the products represented. Ignorance of regulations surrounding prospecting and selling practices can also result in unethical actions.

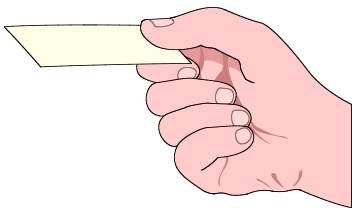
**Due Diligence.** Another important responsibility to the public an agent assumes is to represent an insurer the agent feels comfortable being associated with. Each agent should represent an insurer whose financial stability, products and marketing methods are agreeable to that agent. Representing an insurer using a method or a product the agent does not support is not in the best interests of the public, the insurer or the agent.

### **Results of Negative Public Perception**

The results of negatively impacting the public's perception of the industry can have the effect of reducing overall sales volume, increasing regulation, and dissuading competent, ethical people from entering the insurance sales profession.

### **Insurance Company**

The agent has ethical responsibilities to the insurance company he or she represents. For example, the agent must stay within the boundaries of authority the insurer grants. The agent solicits insurance, discusses product features, collects premium and performs ongoing customer service on behalf of the insurer. Each of these duties must be performed with care, with an effort to meet the expectations set by the insurer.



The insurer requires the agent to properly perform all of the following duties:

- Accurately disclose product features;
- Write profitable business;
- Accept applications for suitable risks, based on the underwriting specifications of the insurer;
- Accurately complete applications;
- Gather and complete any additional required documentation;
- Perform tasks in a timely manner;
- Keep paperwork and other business organized;
- Appropriately handle premium;
- Maintain required records; and
- Consistently transact business in a legal and ethical manner.

When an agent agrees to represent an insurer, and an insurer agrees to allow the agent to represent it, the relationship is both a legal one and one based on trust

and loyalty. The insurer wants the agent to transact business honestly and carefully, and wants the agent to succeed within these parameters. The agent trusts the insurer to provide good product and home office service, pay fair commission or compensation and to keep the commitments made to the agent and policyholders. The relationship between the agent and insurer is an important ethical association.

## Customers

The term “customers” is used to mean prospects, applicants and policyholders. These are the individuals and businesses with which the agent develops a working relationship.

**Ethical Solicitation and Sales Tactics.** Among the many ethical responsibilities to customers is practicing ethical solicitation and sales tactics.

**Competence.** Customers expect competence on the part of the agent. They want to be able to rely on the agent’s representation of the products and plans represented, as well as the agent’s assessment of the customers situation. The agent has an ethical responsibility to customers to know and understand the scope and content of the business offered and sold.

**Appropriate Sales.** Agents also have an ethical duty to customers to make appropriate sales. The agent can do so by assessing the needs of the customer, including a review of current insurance owned and the customer’s financial situation, tax situation, risk tolerance and experience. The risk to be insured must be thoroughly profiled as well. Appropriate sales also include proper disclosure of risks, fees, premium calculations, illustration assumptions, and contract provisions. An agent must also take sufficient time to educate the customer and respond to any questions or objections the customer may have.

**Confidentiality.** The customer relies on the agent to keep information confidential. The agent must be careful not to improperly disclose customer information.

**Customer Service.** In performing ongoing service, the agent has the responsibility to customers to act on a timely basis, execute service requests accurately, and to be responsive to customers’ needs.

## Regulators

Agents are placed in a position of trust by the regulators who authorize them to transact business. The regulators expect agents to obey the laws surrounding their business and to behave ethically toward the public and the insurers agents represent. Among the requirements the regulators hold for agents include the prohibition of:

- rebating;
- improperly disclosing confidential information;
- redlining;
- twisting and churning;
- taking applications with misrepresentations;
- defaming an insurer;
- unfairly discriminating; and
- committing fraud.

The regulators require agents to act in good faith toward the public, be competent and qualified to act as an agent, and to be trustworthy. When an agent applies for and is issued a license, the agent is agreeing to comply with all that the regulators who issue the license require.

### Competition

The agent has the ethical responsibility toward competitors to engage in fair trade practices. Specific regulations prohibit agents from making false or malicious statements against any person engaged in the business of insurance. Attempting to make a sale based on false statements against another agent or insurer puts the falsely accused party at an unfair disadvantage in the marketplace. In addition, if enough false information is circulated, an insurer's overall financial stability could be harmed since policyholders could begin to surrender policies in large numbers.

False advertising is also a type of unfair competition, since the facts about a product are distorted. Any type of misrepresentation could also be considered unfair to competitors.

### Coworkers

The coworkers of an agent are also impacted by the ethical decisions and actions of an agent. The actions of an ethical agent helps to promote the good reputation of the organization for which he or she works. An unethical agent's actions can mar the reputation of that same organization.

Besides harming the reputation of an organization, an agent who does not hold high standards of professionalism can negatively impact the productivity of his or her coworkers. Sloppy paperwork, not responding to customer requests and an overall lack of care often results in other agents or support staff having to do additional work to "make up" for the work not properly completed by the irresponsible agent. Each agent owes it to his or her coworkers to take proper care of his or her own business.

## **Benefits of Ethical Behavior**



Ethical behavior brings benefits to the public, the agent's customers, the insurer, the competition, the agent's coworkers and to the agent.

### **The Public**

By taking ethical actions, an agent serves the public and his or her customers by allowing them to make reasonable decisions about insurance coverage, free from pressure or misinformation.

The ways insurance benefits the individual and society has already been discussed. Ethical agents put no barriers between this benefit and the public.

### **Customers**

Customers are further benefited by good service, good product recommendations, prompt claim payment and so on. The ethical agent will also provide benefit to his or her customers by not pushing product onto them which is not suitable for their needs. Ethical agents provide product which meets the true financial protection needs of their customers.

### **Competition**

It may sound a little overly generous to want to benefit competition. But ethical practices benefits competition because such practices help the health of the entire industry. "One bad apple..." as the saying goes, can hurt many involved in the insurance profession.

### **Coworkers**

Coworkers, too, find benefit in working with ethical agents. Besides being a motivation to others, ethical agents are not a burden to coworkers. Any agent who has had to work with customers following an agent with poor work practices or following an agent who has taken unethical actions can testify to the harm done by that irresponsible agent. Customers must be "re-sold" and customer confidences rebuilt, consuming much time and effort. Ethical agents want to work with other ethical agents, those who will build up customer trust and accumulate stable production.

### **The Individual Agent**

Ethical behavior benefits the individual agent as well. Successful agents are quick to point out that their longevity and good production are the result of good customer relations. Putting the customer first, they say, leads to additional purchases and referrals.



Besides the strength in business ethical practices bring, the ethical agent can have pride in his or her work, and has the satisfaction of knowing he or she has done the best for every client.

## Chapter One Study Questions

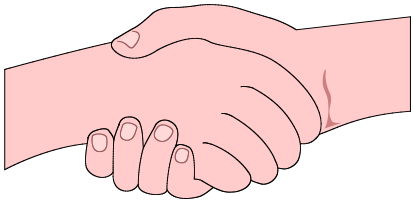
1. \_\_\_\_\_ is (are) impacted by an agent's ethical practices.
  - a. The public
  - b. The insurer
  - c. The agent's coworkers
  - d. all of the above are impacted by an agent's ethical practices.
  
2. Insurers may negatively impact public perception through \_\_\_\_\_, \_\_\_\_\_, or not meeting the real and perceived \_\_\_\_\_ of the policies they issue.
  
3. Put an "x" next to each duty the insurer requires of an agent:
  - a. accurate disclosure of product features
  - b. purchase of television advertising time
  - c. writing profitable business
  - d. accurate completion of applications
  
4. List four expectations customers have of agents:
  - a.
  - b.
  - c.
  - d.
  
5. The primary ethical responsibility an agent has toward competition is to engage in \_\_\_\_\_ practices.

6. Place an "x" next to each way in which an agent can negatively impact coworkers through unethical actions:

- a. the agent can harm the reputation of an entire organization
- b. because the unethical agent will make more sales, the ethical agent's production will decrease
- c. because the unethical agent may be sloppy in paperwork, may not respond to customer requests, and may demonstrate an overall lack of care, the agent can reduce productivity of other agents and support staff who may have to "make up" for these improper practices.

7. Ethical behavior helps the individual agent in the areas of longevity and good production because putting the customer first leads to \_\_\_\_\_ and \_\_\_\_\_.

## Chapter Two: Ethics of the Agent and the Insurance Company



A significant ethical relationship of the insurance agent is the relationship with the insurance company or companies for whom he or she acts as an agent. The insurer gives the agent authority, power and responsibilities. The agent has the legal and ethical duty to appropriately wield this authority and power and carry out these responsibilities to meet the insurer's expectations.

### **Agency**

In order to understand the ethical responsibilities of the agent, the rules of agency must be discussed. An agency relationship is one between two or more persons in which one person represents the other. The representative is the agent, and the person represented is the principal. In insurance, an agent may be a general agent, an independent agent, and or a "captive" or "exclusive" agent. A general agent represents the principal in all business of a particular type. An independent agent represents more than one insurance company, and a captive agent represents only one insurer.

Georgia statutes define an agent as:

*an individual appointed or employed by an insurer who solicits insurance or procures applications for insurance; who in any way, directly or indirectly, makes or causes to be made any contract of insurance for or on account of an insurer; or who as representative of an insurer receives money for transmission to the insurer for a contract of insurance, anything in the application or contract to the contrary notwithstanding, and who has on file with the Commissioner a certificate of authority from each insurer with whom the agent places insurance. (Code Section 33-23-1(a)(3))*

The code, in the same section, goes on to specify what is not included in the definition of an agent:

Georgia Code



*(b) The definition of agent...shall not be deemed to include:*  
*(1) Any regular salaried officer or employee of an insurer or of an agent or subagent who performs only clerical or administrative services in connection with any insurance transaction so long as such person is not involved in soliciting insurance or signing or countersigning contracts;*

(2) *An attorney at law admitted to practice in this state, when handling the collections of premiums or advising clients as to insurance as a function incidental to the practice of law or who, from time to time, adjusts losses which are incidental to the practice of his or her profession;*

(3) *Any representative of ocean marine insurers;*

(4) *Any representative of farmers' mutual fire insurance companies as defined in ...this title;*

(5) *A salaried employee of a credit or character reporting firm or agency not engaged in the insurance business who may, however, report to an insurer;*

(6) *A person acting for or as a collection agency; or*

(7) *A person who makes the salary deductions of premiums for employees or, under a group insurance plan, a person who serves the master policyholder of group insurance in administering the details of such insurance for the employees or debtors of the master policyholder or of a firm or corporation by which the person is employed and who does not receive insurance commissions for such service; provide, further, that an administration fee not exceeding 5 percent of the premiums collected paid by the insurer to the administration office shall not be construed to be an insurance commission.*

## **Agent Authority**

An agent is given authority to act for a principal in three ways, through “express authority,” “implied authority,” and “apparent authority.”

### **Express Authority**

Express authority is given by the principal to the agent through a written document. This is typically done through an “Agent’s Agreement,” or “Agent’s Contract.” Such a document details the responsibilities and duties of the agent, the compensation agreed upon, and may include statements limiting the agent’s authority, or defining in what ways the agent may not represent the insurer.

### **Implied Authority**

Implied authority is authority that an agent is believed to have. Rather than being given through written documentation, this authority may be conveyed through previous dealings between the parties. For example, if the agent has been regularly allowed to bind coverage, a court may rule that the agent has this authority even if a written agent agreement does not state that the agent has such authority.

### **Apparent Authority**

Apparent authority exists when an agent acts outside of expressed authority and the principal does nothing to stop the agent. Because the principal does not stop or impede the actions, the principal becomes bound to stand behind them.

## **Power Given the Agent**

The insurer gives the agent several powers to act on the insurers behalf. The agent has the power to *solicit business, disclose product features* during the selling

process, collect premium, and perform ongoing customer service on behalf of the insurer.

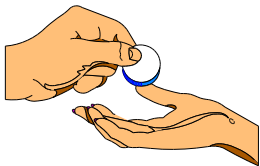
### **Soliciting Insurance**

The agent may solicit potential customers through several marketing channels. The agent may use direct mail, telephone solicitation, seminars, and customer or professional referrals to contact customers. Each of these methods of solicitation have ethical and legal requirements related to their use. For example, individuals may request that their names not be part of direct mail or telephone solicitation lists. The agent is both ethically and legally barred from soliciting such individuals through the mail or by telephone. The insurer expects that an agent representing it will solicit responsibly and legally.

### **Disclosure of Products**

The insurer gives the agent the power to disclose product features, benefits, provisions and fees to applicants and policyholders. This represents the central responsibility of the agent on behalf of the insurer. The agent must thoroughly understand the product or products being represented and accurately disclose them. If the agent misrepresents a product, the insurer may be in put in the position of financial loss in order to remedy the misrepresentation made. If significant misrepresentation occurs, the insurer could suffer regulatory fines and/or suspension or revocation of license.

### **Premium Collection**



Agents may collect premium for the insurer. In some cases, agents collect initial premium only. Other agents may collect additional and renewal premium as well. Collecting premium is an important trust that both the insurer and the customer places in the agent.

Misuse of premiums collected is prohibited in the Georgia Code in Section 33-6-5(6):

Georgia Code



(A) *No person shall knowingly collect any sum as premium or charge for insurance, which insurance is not then provided or not in due course to be provided subject to acceptance of the risk by the insurer by an insurance policy issued by an insurer as permitted by this title.*

(B) *No person shall knowingly collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, which sum is specified in rates as filed with and approved by the Commissioner. In cases where classifications, premiums, or rates are not required by this title to be filed and approved:*

(i) *The premiums and charges for insurance, except insurance written in accordance with Chapter 5 of this title, shall not be in excess of or less than those specified in the policy and as fixed by the insurer; and*

*(ii) The premiums and charges for insurance written in accordance with Chapter 5 of this title shall not be in excess of or less than those specified in the policy.*

Section 33-23-21 also includes regulations regarding premium collection. If an agent performs any of the following actions, his or her license may be suspended or revoked:

*(4) Has misappropriated, converted to his or her own use, or illegally withheld money belonging to an insurer, insured, agent, agency, applicant or a beneficiary;...*

*(13) Has failed or refused, upon written demand, to pay over to any insurer, agent, agency, applicant, beneficiary, or insured any moneys which belong to such insurer, agent, agency, applicant, beneficiary, or insured.*

The agent must follow both state regulations and the insurer's requirements in collecting and remitting premium.

### Performing Customer Service

Another important power the insurer gives the agent is to perform customer service duties on behalf of the insurer. Customer service can include administrative duties such as answering policyholder questions, forwarding written change of address requests, supplying appropriate forms and providing phone numbers to the insured. It can also include inspecting property, putting a risk management program into place, or adjusting a claim. The insurer trusts the agent to perform these duties as company policy directs and within the professional, ethical and legal requirements of the position.

### **Agent Responsibilities**

Disclosure of products, premium collection and performance of customer service each include several specific responsibilities the agent must perform on behalf of the insurer.

#### Accurate Disclosure

Accurate disclosure of products involves a thorough understanding of each of the contract's provisions and the terms used and defined in the contract. The agent must also understand how the contract provisions are applied to specific situations. An agent must be as familiar with the policy's disadvantages as with its benefits, and must know how the policy provisions apply in specific circumstances. The agent must know the policy's benefit limitations, what documentation the insured must keep as evidence of loss, what the insured's duties are at time of loss, what activities would cause the insured to no longer be covered by a policy provision, and so on.

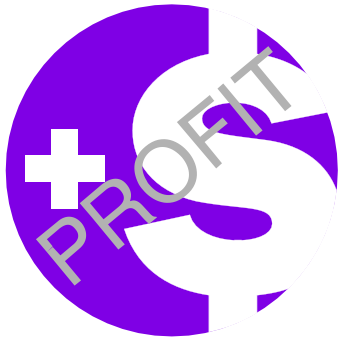
The contract terms and provisions must be explained with complete honesty and full disclosure. If the product is the right product for the customer, the agent will be able to demonstrate its suitability by being truthful. An understanding of

alternatives available to the customer and an honest comparison of the alternatives to the policy can help the customer select the product that is best for that customer. Sometimes, the agent may have to turn away business because what he or she has to offer is not the best choice. The customer will remember the honesty of that agent, and may come back to that agent, or refer others to that agent because of the care for his or her customers the agent demonstrates.

### Field Underwriter

The agent acts as a field underwriter for the insurer. As a field underwriter, the agent attempts to meet the objective of writing profitable business for the insurer, while screening out unacceptable risks and obtaining a complete picture of the risk for final approval through the home office.

### Finding Profitable Business



Most insurers are for-profit entities, although some insurers, such as fraternal benefit societies, are not for-profit entities and so do not include a profit margin in business written. When for-profit insurers develop rates and underwriting standards, a reasonable profit margin is included. The insurer requires its agents to follow the rate and underwriting standards it has developed in order for the insurer to make that reasonable profit margin. If business which has a risk level which exceeds the insurer's standards is written, the claim frequency and or amount will be higher than the insurer's expectations, and the insurer's profit margin will be eroded. If an insurer's claim frequency or amount exceeds expectations by too great a margin, the insurer may risk insolvency. It is critical for an insurer for an agent to adhere to the underwriting standards the insurer has established.

The agent must screen out unacceptable risks for the insurer. The primary way the agent does so is through the collecting of complete information about the risk. The insurer expects the agent to faithfully record all relevant information and find out as much information as due diligence requires. Depending on the type of insurance, the agent may need to ensure the insurance application is correctly and completely filled out, do onsite inspections, take photographic records of a risk, complete detailed forms, order paramedic exams, or perform other duties necessary to gather all necessary information.

While the insurer wants to turn away all unacceptable risks, it wants to retain acceptable risks. At times, the agent will need to submit additional documentation to an insurer so that a risk that might appear at first to be unacceptable is shown to be acceptable. For example, a business may have a poor loss record, but may have implemented new loss control procedures or



installed new safety equipment. The insurer expects the agent to take the time to document the current situation accurately so that the now acceptable risk can be underwritten.

### **Risk Management**

The agent also may be called upon to act as a risk manager for the insurer. Risk managers use four methods to deal with risk: avoiding risk, controlling risk, retaining risk, and transferring risk.

**Avoiding Risk.** One of the methods of managing risk is to avoid it all together. In a business, this may mean eliminating a particular product line or operation. In a home, it may mean tearing down an unsafe structure. For an individual, it may mean eliminating cigarette smoking, or removing certain foods from a diet.

**Controlling Risk.** Controlling risk can be the least expensive method of handling risk. In a business, risk may be controlled by implementing safety rules. In a home, smoke alarms may be installed so that a fire may be responded to quickly. Exercise can be used to control certain health risks.

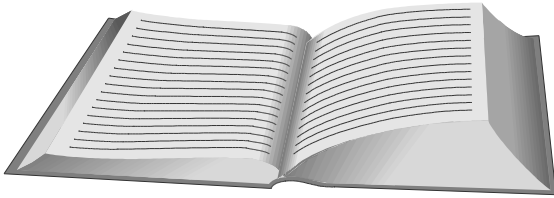
**Transferring Risk.** Transferring risk means that the consequences of the risk are borne by another party. Insurance is the most common method used to transfer risk. The insured pays a premium based on the amount of risk transferred to the insurer, and the insurer reimburses the insured for the financial loss caused by or to a covered risk.

**Retaining Risk.** Risks which are infrequent or relatively inconsequential may be retained by businesses, homeowners and other individuals. Sometimes, risks which could be catastrophic are retained, because the likelihood of the risk occurring is very minimal, and insuring the risk would be too expensive.

It is the agent's job to analyze a risk to assist the customer in determining which risk response is best for that customer. The agent follows four steps in risk management: risk identification, risk evaluation, risk response, and risk implementation.

**Risk Identification.** The risk identification process varies based on the type of risk involved. In commercial property and casualty insurance, the risk must be inspected, business processes reviewed, and primary and secondary risks identified. For example, a primary risk may be the risk of fire. A secondary risk would be the loss of income to the business while it was closed for repairs due to a fire. Insurers generally have detailed forms and checklists to help the agent identify all the risks involved.

Risk identification for life and health insurance can involve reviewing the health history of the individual and his or her relatives. Lifestyle risks are also reviewed, such as alcohol and cigarette consumption, medications taken, occupation, hobbies, and so on. The insurance application is used to identify most of these risks, paramedic or full medical examinations provide additional information, and medical information bureau reports may also be used.



**Risk Evaluation.** Risks are evaluated on the basis of frequency and severity. Frequency of a risk is how often the loss may occur. Insurers commonly have detailed statistics available on various risk frequencies. Severity of a risk is measured by the amount of financial loss the risk can cause. Statistics can be used, along with the details or profile of a specific risk. The frequency and severity of a risk can help determine whether the best response is to avoid, control, transfer or retain the risk.

**Risk Response.** As mentioned, risk is responded to in four ways. The agent can help an individual or business make a decision regarding which response is the best.

Today, insurers place a lot of focus on controlling risk. Insurers are responsible for a great deal of health and exercise information disseminated to the public. Safety procedures at the workplace are often devised by insurers or the examiners they hire. Insurers, along with fire fighting organizations, are responsible for the emphasis on smoke alarms in the home. Historically, insurers have been responsible for establishing construction and fire safety codes. Controlling risk not only keeps the insurer from paying out claims on excessive losses, but benefits the individual insured and in some cases, society as a whole since the risk and its negative consequences are less likely to occur.

**Risk Response Implementation.** Once the appropriate risk response is identified, it must be implemented. The agent can help the customer implement the response to transfer risk by carefully completing the sales process and having the policy issued. In some cases, the agent will visit the risk site regularly to ensure required risk response elements are in place, such as certain safety equipment. By keeping in contact with a policyholder, the agent can review the policyholder's situation and make sure the risk management process in place is the best one on an ongoing basis, and if not, can make suggestions to alter the risk management process for the good of the customer.

## **Taking The Application**

Once the agent has identified the risks, disclosed product features, and the customer has decided to apply for coverage, the agent has the responsibility of taking the application. As has been discussed, the agent must take complete information and do his or her best to make sure no misrepresentations or material omissions are made on the application. The insurer expects the agent to alert it of any item that may need more investigation. The agent represents the insurer, and has an ethical responsibility to inform the insurer of any item which is pertinent to the risk being written. The insurer's best interests must be upheld while the agent is performing duties on behalf of the insurer, including taking the application.

Besides the information on the application, the insurer may require information from an inspection report, consumer or credit report, or medical information bureau report. The last chapter detailed Georgia's legislation regarding information gleaned from such reports and the applicant's and policyholder's rights along with the insurer's and agent's responsibilities to disclose these rights. The agent will need to explain to the applicant the purpose of these reports, and give the appropriate notices and disclosures.

**Inspection Reports.** An inspection report is also known as an "investigative report" and is referred to as an "investigative consumer report" in Georgia legislation. The purpose of such a report is to give information regarding an individual's lifestyle and character, and is used most commonly for policies issued for large amounts. Georgia Code Section 33-39-3(13) defines this report as meaning:

*a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.*

An inspection report helps the insurer get a complete picture of a risk to be insured. Neighbors, friends or the individual's employer could be contacted in order for an inspection report to be completed.

**Consumer or Credit Reports.** If the insurer needs to verify the credit of an applicant or policyholder, a consumer or credit report may be obtained. An insurer may need to know a person's credit history to ensure premiums will be paid, or to assess the moral hazard risk of an applicant. A moral hazard is one that occurs when an insured has an immoral purpose to collect on an insurance policy. An individual with poor credit may be considered to be a moral hazard to an insurer, and as such, may be denied coverage. Georgia Code 33-39-3(6) defines a consumer report to mean:

*any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in connection with an insurance transaction.*

**Medical Reports.** Medical reports are used to verify medical information disclosed on insurance applications. A primary source of medical reports is the Medical Information Bureau, or MIB. Medical information may also be verified through the applicant's physician, or through the requirement of a paramedic or full medical examination.

Georgia rules require that information relating to a medical condition must be reported directly to an individual or a medical professional designated by the individual. If an adverse underwriting decision results from medical information, the specific terms of medical-record information must be disclosed either to the individual or to a medical professional designated by the individual. (Code Section 33-39-9, 11)

### **Responsibility for Insuring Documents**

The insurer also expects the agent to take care of the documents provided by the insurer. For example, some insurers allow "field issue" of policies: the agent completes the application and attaches it to a contract, effectively issuing the policy. Each contract is typically kept secure via a computerized issue system or through an inventory control procedure. The insurer requires that the agent take care in handling these contracts to eliminate the chances of a fraudulent policy being issued.

In addition, the agent is prohibited by insurers and the Georgia Code from signing blank policies:

Georgia Code



*Code Section 33-23-30*

*An agent shall not sign or countersign in blank any policy to be issued outside of such agent's office nor countersign in blank any endorsement of any policy to be issued outside of such agent's office. An agent shall not give power of attorney to or otherwise authorize anyone to sign or countersign the agent's name to policies unless the person so authorized is directly employed by the agent and no other person, and the person has no office files, equipment, or address in regard to the insurance business other than those in the office of the agent. Nothing in this Code section shall prohibit an agent from authorizing an insurer represented by such agent to reproduce mechanically or electronically such agent's signature on policies, certificates, endorsements, riders, or other insurance contract documents.*

## Timeliness

The insurer expects the agent to respond to customer requests, submit applications and accompanying documents, remit premium, and complete service duties in a timely manner. In some cases, regulation requires that certain transactions, such as claims processing, be completed within a specified time. The agent's job also includes turning paperwork over to the insurer as rapidly as accuracy and thoroughness allow.

## Organization

An underlying necessity to enable an agent to meet the many responsibilities of his or her duties is organization. In order to fulfill the ethical and legal responsibilities of the profession, the agent keeps track of many pieces of policyholder information and documents, responds promptly to client and company requests, and manages prospecting and applicant data. Each agent must maintain a system of organization to control all this information.

## Handling Premium

As mentioned, one of the powers given the agent is the collection of premium on behalf of the insurer. The agent has responsibilities to the insurer and the customer to report the actual premium received and turn it over to the insurer. Violating this responsibility can result in a misdemeanor or felony conviction:

### Georgia Code



#### *Code Section 33-23-35*

*(a) An agent, subagent, or any other representative of an insurer or of any other person in the effectuation of an insurance contract shall report to the insurer or its agent the premium for the contract and the amount shall be shown in the contract. Each willful violation of this subsection shall constitute a misdemeanor.*

*(b) All funds representing premiums received or return premiums due the insured by any agent or subagent shall be accounted for in the licensee's fiduciary capacity, shall not be commingled with the licensee's personal funds, and shall be promptly accounted for and paid to the insurer, insured, or agent as entitled to such funds. Nothing contained in this Code section shall be deemed to require any agent or subagent to maintain a separate bank deposit for the funds of each principal, if the funds so held for such principal are reasonably ascertainable from the books of accounts and records of the agent or subagent.*

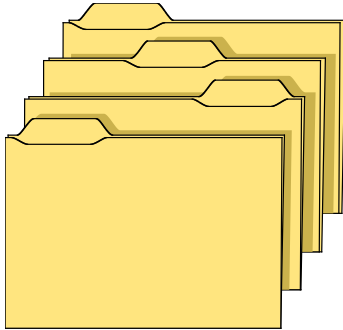
*(c) Any violation of this Code section shall constitute grounds or cause for action by the Commissioner, including, but not limited to, probation, suspension, or revocation of the license. Each and every act by a licensee shall also constitute grounds for fines and penalties, which amounts shall be set by rule or regulation of the Commissioner. Any willful violation of this Code section shall constitute a misdemeanor unless such amounts involved exceed \$500.00, whereby such violation shall constitute a felony.*

The agent holds a position of trust in the role of fiduciary of another's money. If an incorrect premium amount is reported, the policyholder may be issued a

policy without the coverage he or she needs. If premium is held by the agent, and not turned over to the insurer in a timely manner, there is a risk that the policyholder will not be covered as early as the policyholder is entitled.

If such action is “willful,” not an error or oversight, a serious violation of fiduciary trust occurs. Dishonesty is not tolerated by the insurance regulators nor by the profession.

### Maintaining Required Records



Agents are required to keep certain records by state statute. In Georgia, such records may be kept at the address shown on the agent’s license, at the insurer’s regional or home office situated in Georgia, or the insurance agency in which the agent is employed and which is licensed in Georgia. The required records must be “in an organized form” and must include each insurance contract “procured, issued, or

countersigned,” and:

- the name of the insurers and the insureds;
- the amount of premium paid or to be paid;
- a statement of the subject of insurance;
- the names of any other licensees from whom business is accepted; and
- the names of persons to whom commissions or allowance of any kind are promised or paid.

Records must be kept for five years, beginning immediately after the completion of the transaction or the term of the contract, whichever is **greater**.

## **Chapter Two Study Questions**

1. Name the three ways an agent is given authority to act for the principal:
  
  
  
  
  
  
  
  
  
  
2. Which of the following are included among the powers given an agent by an insurer? (More than one answer may apply.)
  - a. the power to solicit business
  - b. the power to file new products with the state department of insurance
  - c. the power to disclose product features
  - d. the power to collect premium
  
  
  
  
  
  
  
  
  
  
3. True or False. It is permissible for an agent to collect as the full premium for a policy an amount that is different from that stated in the policy, as long as the different amount is **less** than that stated in the policy. \_\_\_\_\_
  
  
  
  
  
  
  
  
  
  
4. Place an "x" next to each item which is an agent responsibility as a field underwriter.
  - a. finding profitable business
  - b. risk management
  - c. taking the application
  
  
  
  
  
  
  
  
  
  
5. The primary way the agent screens out unacceptable risks for an agent is through collecting \_\_\_\_\_ about the risk.
  
  
  
  
  
  
  
  
  
  
6. List the four methods used by risk managers to handle risk:

7. \_\_\_\_\_ risk is a risk response which can include implementation of safety procedures at the workplace.

8. "A consumer report in which information about a person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items" is a (an) \_\_\_\_\_.

9. "Any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in connection with an insurance transaction" is a (an) \_\_\_\_\_.

10. When medical information is obtained on an applicant or policyholder, Georgia rules require that information relating to a medical condition:

- a. must not be disclosed under any circumstance.
- b. must only be disclosed if the condition is "serious," as defined in the Georgia Code.
- c. must be reported directly to an individual or a medical professional designated by the individual.
- d. none of the above

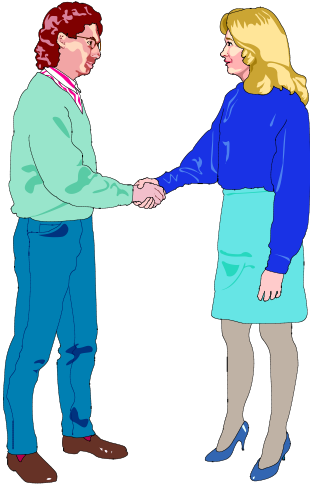
11. True or False. It is permissible in Georgia for an agent to sign blank applications and mail them to applicants to complete and mail into the insurer during the period the agent takes an annual vacation.



12. Required records may be kept at any of the following places, except:
- a. at the address shown on the agent's license
  - b. at the insurer's regional or home office outside of Georgia
  - c. at the insurer's regional or home office in Georgia
  - d. at the insurance agency in which the agent is employed and which is licensed in Georgia



## Chapter Three: Ethics of the Agent and the Customer



This chapter will discuss the ways in which the agent performs professional responsibilities for and with the customer. At the core of performing each task are the ethical responsibilities the agent has toward the customer, including selling suitable product, responding honestly to objections, and maintaining the confidentiality of the customer's financial and personal situation.

The relationships discussed so far, those with the regulators and the insurer, involve many necessary duties and tasks. So does the relationship with the customer. But the relationship with the customer is the one which holds the promise of the most satisfaction and professional pride. The agent is in a position to be of great help to his or her customers, providing solutions for the protection of property and other financial assets.

### **Competence**

The foundation for all of an agent's duties is competence. The word "competent" comes from the Latin word *competo*, meaning to be "meet" or suitable. Webster's dictionary defines competent as "Answering all requirements; suitable; fit; sufficient or fit for the purpose; adequate; having legal capacity or power."

A standard of competency is regulated through the requirements of licensing and continuing education. As discussed earlier, the agent must pass a licensing exam and the insurer must affirm the agent's qualifications to act as an agent for that insurer. Each agent must complete a specified number of continuing education hours in order to retain his or her license.

Prelicensing and regulated continuing education are not the only method for an agent to develop and increase competency. A new agent, or one beginning new product or business lines, can gain competency by observing more experienced agents. Accompanying an experienced agent on customer calls, with the customer's permission, gives the less experienced agent an opportunity to view real life customer situations, such as the questions and objections raised by the customer, and the way these questions and objections are answered by the experienced agent.

Joining professional associations is another way to increase competency. Joining such organizations often brings the opportunity of increasing knowledge and

gaining exposure to other products and business lines. Professional associations often offer regular luncheons or breakfasts that include an educational presentation.

Agents can also increase competency by gaining accreditation from groups who offer professional designations via education. An agent can attain the Chartered Financial Consultant (ChFC) designation, the Certified Financial Planner (CFP) designation, the Certified Life Underwriter designation (CLU), the Associate in Claims (AIC) designation, the Associate in Risk Management (ARM) designation, Associate in Underwriting (AU) designation, Associate in Management (AIM) designation, or a Chartered Property and Casualty Underwriter (CPCU) designation, to name a few. Notice that designations are available for those in the life and for those in the property-casualty industry.

The competent agent knows where the boundaries of his or her competency are found. This means that competency brings with it the obligation of understanding when the agent is unable to adequately assist a customer. If the business or personal insurance needs of a customer are outside the scope or knowledge and experience of an agent, that agent needs to refer the customer to able professional help, or to bring in an experienced agent to assist in the transaction. The less experienced agent may lose or have to split a commission in such a situation, and must be willing to do so for the benefit of the customer.

An agent also must not step outside his or her legal competency boundaries. An agent is not a tax advisor, lawyer or CPA. Having some tax knowledge of an insurance product can help the agent to know when to refer a customer to a tax professional, but the agent must never offer tax advice. Certain estate planning issues may not be addressed by an agent, but should be referred to a lawyer or CPA. Legal liability questions must also be answered by a lawyer. An agent must be careful not to act outside of his professional and legal knowledge and responsibilities.

Besides competence in the products and plans the agent may offer, the customer expects the agent to understand and follow the legislative rules surrounding the business, and to know about any special programs which can be of help to the customer. For example, in Georgia, all property insurers are required to participate in the Fair Access to Insurance Requirements (FAIR) Plan, which means that even customers in geographic areas who would otherwise find it difficult to find insurance have the ability to purchase it. Section 33-33 of the Georgia Code gives the provisions of the FAIR Plan:

Georgia Code



*33-33-1. All insurers licensed to write and writing property insurance in this state on a direct basis are authorized, subject to*

*approval and regulation by the Commissioner, to establish and maintain a Fair Access to Insurance Requirements (FAIR) Plan and to establish and maintain an underwriting association and to formulate and from time to time amend the plan and articles of association and rules and regulations in connection therewith and to assess and share on a fair and equitable basis all expenses, income, and losses incident to the Fair Access to Insurance Requirements Plan and underwriting association in a manner consistent with this chapter.*

*33-33-2. The Fair Access to Insurance Requirements Plan and articles of association shall make provision for an underwriting association having authority on behalf of its members to cause to be issued property insurance policies, to reinsure in whole or in part any such policies, and to cede any such reinsurance. The plan and articles of association shall provide, among other things, for the perils to be covered; geographical area of coverage; compensation and commissions; assessments of members; the sharing of expenses, income, and losses on an equitable basis; cumulative weighted voting for the board of directors of the association; the administration of the plan and association; and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements.*

*33-33-3. (a) Each insurer authorized to write and writing property insurance in this state shall be required to become and remain a member of the plan and the underwriting association and to comply with the requirements of the plan and the underwriting association as a condition of its authority to transact property insurance business.*

*(b) Each insurer shall participate in the writings, expenses, profits, and losses of the association in the following manner:*

*(1) For habitational risks, the same proportion as its habitational premiums written bear to the aggregate habitational premiums written by all insurers in the program; and*

*(2) For commercial risks, the same proportion as its commercial premiums written bear to the aggregate commercial premiums written by all insurers in the program.*

*33-33-4. (a) The directors of the association shall submit to the Commissioner, for review, a proposed Fair Access to Insurance Requirements Plan and articles of association consistent with this chapter.*

*(b) The Fair Access to Insurance Requirements Plan and articles of association shall be subject to approval by the Commissioner and shall take effect ten days after having been approved by the Commissioner. If the Commissioner disapproves all or any part of the proposed plan and articles, the directors of the association shall within 30 days submit for review an appropriately revised plan and articles; and, if the directors fail to do so, the Commissioner shall thereafter promulgate such plan and articles consistent with this chapter.*

*(c) The directors of the association may, on their own initiative or at the request of the Commissioner, amend the plan and articles, subject to approval by the Commissioner.*

The insurer will have details for the agent regarding procedures and underwriting requirements for writing policies under the FAIR plan. The agent can provide customers with property insurance needs for a higher risk profile assistance through this program.

## Making Appropriate Sales

An appropriate sale is one which meets the customer's needs, objectives, risk tolerance, and financial situation. The agent has an obligation to sell only when the insurance provides a demonstrable benefit to the customer. The sales process must be devoid of coercion, unclear information, or a "one product fits all" approach.

### Assessing Needs

Before a sale is made, the insurance agent must have an understanding of the customer's needs. The agent must review all of the following items to do so: the current insurance in force, financial situation, risk to be insured, tax situation, and experience with other insurance products.

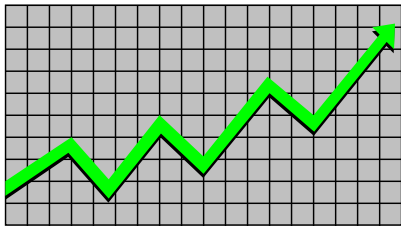
**Current Insurance.** The customer may have current insurance in force on his or her property, life, health, or other risk. The agent can often serve the customer best when the customer provides him or her with the details of this other insurance. The agent can then review current policies to see if "holes," or insufficient coverage, exists on the risks the customer is discussing with the agent. The purpose of reviewing existing insurance is not to twist or churn, but is for the legitimate purpose of serving the customer. If the customer is interested in replacing the contract, the agent must complete any required replacement analysis and disclosures.

When reviewing current insurance, the agent should not try to interpret provisions of policies with which he or she is unfamiliar. If a provision is not standard, and the agent is unsure of its meaning, the agent should direct the customer's questions back to the agent or insurance company who issued the policy. Sometimes an agent is hesitant to refer a customer back to a competitor, but if the information is material, the customer should be encouraged to ask the policy issuer. The customer will appreciate the fair and honest treatment. In some cases, resources are available for use in comparing policies issued by different insurers with policies the agent offers, although only common policy features are generally compared.

**Financial Situation.** The financial situation of the customer is important in order to determine the amount of coverage needed. In the case of life insurance, current income, projected future income and savings all help determine the amount of coverage required. Disability and liability insurance needs look at these same factors, along with others, such as exposure to liability or disability risks. A property insurance needs assessment includes reviewing the value of the assets to be insured, and the financial ability of the insured to replace or repair assets without insurance protection.

The financial situation of the customer can also serve to put a ceiling on the amount of insurance able to be purchased. Premiums should not put an individual in the position of financial hardship. The customer must be able to meet expected and emergency expenses of the future.

**Tax Situation.** The tax situation of the individual plays a part in the needs analysis when life insurance is to be purchased. Certain types of life insurance offer various tax advantages. The taxable income and tax bracket of an individual can impact the value of life insurance or annuities in that individual's financial portfolio.



**Risk Profile.** The risk to be insured must be understood by the agent in order for the agent to suggest the appropriate product and insurance amount. Depending on the type of insurance to be purchased and the type of risk, completing a risk profile may take several minutes, or several days.

**Risk Tolerance.** The amount and type of insurance an individual will purchase is impacted by the amount of risk that individual is willing to tolerate. Setting aside coinsurance issues, wherein a certain amount of property insurance must be purchased in order to have full coverage on the insured risk, different individuals may buy different amounts of insurance because of their feelings and perceptions about risk. Some individuals feel comfortable retaining more risk than others. Some purchase life insurance products with minimal risk (whole life), others assume more risk (variable universal life or variable life). Some individuals feel no concern about certain risks. Others want to be insured for every possible risk.

The agent's job is to educate the client about the types of risks for which the agent provides insurance and for which the client has a need. A risk averse customer's fears should not be used to sell more insurance than necessary. A customer with a high risk retention tolerance needs to be educated on the real risks the customer's family or business face, so that a reasonable amount of insurance is purchased. Insurance agents have access to much statistical data about the risks for which they write insurance. Such objective data can help customers determine the insurance they really need.

**Experience.** The past experience an insured has had with insurance products also is important for an agent to understand. A customer who has had a bad experience with insurance, perhaps believing a claim should have been paid when it was not, or experiencing poor returns on a life product, may need much more education and explanation regarding a policy than someone who has had positive experiences with insurance products. A person who has never

purchased insurance before, such as a young adult, or a widow whose spouse had made all the financial decisions, will need more education than an experienced buyer as well. The ethical agent will take the time to make sure the inexperienced, the experienced, and those who feel they have been ill-treated all get the information they need.

### **Disclosure**

The need for accurate and honest disclosure has been discussed previously, both from the standpoint of the regulators and the responsibility of the agent working as a representative of an insurer. There are many facets of insurance transactions that must be disclosed.

### **Risks**

Risks of insurance products generally relate to variable life products. However, property and casualty policies contain risks in the sense that they do not cover all possible contingencies. Property policies generally exclude war and nuclear damage, for example. The agent must be careful not to omit facts regarding what circumstances or risks are not covered by the products they offer.

Variable life policies contain risk of policy values, although they may include minimum rate guarantees. Such risks must be disclosed to the customer. Agents who sell variable products generally must be licensed with a special insurance license as well as a securities license. The training for these licenses includes how such risks must be discussed with customers.

### **Fees**

If a policy includes fees, such fees must be disclosed to the customer. Policies may include administrative and/or management fees. In some cases, if a policy is cancelled within a certain period of time, the full premium is not refunded, or charges are levied against account values.

### **Premium Calculation**

Some policies have rather complicated premium calculations. Regulations restrict insurers from using calculations which are too difficult to reasonably understand, but certain types of insurance inherently have more complicated premium calculations than others. For example, business insurance may be purchased in which premium is calculated based on monthly reports, or based on the prior insurance period's experience. The agent must clearly disclose premium calculation methods to avoid misunderstandings with policyholders.

### **Illustrations**

Life policy illustrations have recently been the subject of scrutiny by insurance regulators and associations. The industry felt that the lack of uniformity in disclosures and assumptions in illustrations was leading to the misrepresentation of products to the public.



In response to this, the NAIC developed model regulations regarding life policy illustrations. When the NAIC develops model regulation, states often adopt the regulations as written, or with slight modifications.

The model regulation applies to individual and group life policies, excluding variable life, individual and group annuities, credit life, and life policies with death benefits \$10,000 or less. Some of the requirements of the NAIC model regulation for illustrations include:

- illustrations must identify the insurer, the agent, the insured, the underwriting classification, the policy type, the initial death benefit, and the assumption options selected for the illustration;
- illustrations must be accurate, complete, clearly labeled, and contain true representation;
- insurers must keep copies of illustrations for issued policies until three years following the termination of the policy; and
- illustrations must contain both a narrative explanation and a numeric summary of the policy illustrated for policy years five, ten, twenty and at age 70 based on policy guarantees, the illustrated scale, and halfway between the policy guarantee amount and the illustrated scale.

The illustrated scale which may be used cannot use assumptions greater than the current scale (e.g. the current yield or current dividend rate), or a “disciplined current” scale, which is one certified by an actuary to be reasonable, based on actual recent historical experience.

Depending on the type of policy, the NAIC model regulation contains other requirements as well. For example, policies that could result in returns that eliminate the need for premium, such as some universal life policies, cannot be illustrated using the term “vanishing premium.” Illustrations for such policies must clearly disclose that premiums are due at specified periods, that actual policy performance can vary, and that the policyholder is responsible for premium while the policy is in-force.

The point behind this regulation is to ensure that policyholders and applicants have accurate, clear information that is unlikely to mislead. Whenever returns or dividend yields on insurance products are discussed, the agent must be careful to distinguish between those which are guaranteed and those which are hypothetical.

### Waiver and Estoppel

Certain legal rules apply when an agent is disclosing information to a customer. Included in these rules of law are the concepts of waiver and estoppel. A waiver is the voluntary act of giving up a right, claim or privilege. Waivers may be

“express,” meaning they are given orally or in writing, or may be “implied,” given through conduct.

Neither the policyholder nor the agent can waive all rights related to a policy. If a waiver relinquishes a right which was given by law, regulation, rules or statutes created in the interest of the public, the waiver is not valid. For example, if the state requires a 10 day free look on an insurance policy, a ten day period wherein the policy can be cancelled without loss of premium, the insured cannot be given a two day free look, even if the insured agreed to such an arrangement in writing. The insurer cannot waive requirements such as insurable interest in a contract, or waive its right to accurately represented material information on an application.

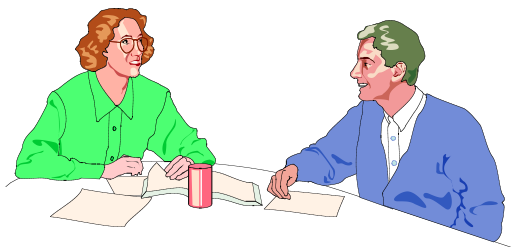
An agent also needs to be aware of the legal rule of estoppel. Estoppel exists when a party’s own act or lack of action prevents it from taking subsequent action. For example, if an agent observes that insured property does not meet a coverage requirement, but does nothing about it, a court may not allow the insurer to deny a claim on the basis of the property not meeting that coverage requirement. Prompt action as well as disclosure is required of an agent when working with customers.

### Parol Evidence Rule

Another legal rule important to the agent and customer is the parol evidence rule. This rule states that oral agreements are considered part of a written agreement by the courts. In other words, once a contract is written, the court assumes any oral agreements made prior to the written contract are contained in the written contract. Unless fraud is proven, oral agreements made prior to the written contract and which are not part of the written contract cannot be upheld. To protect the customer, the agent must carefully complete applications and review issued contracts to ensure the policy is issued as the customer and agent intended.

### Contract Provisions

An agent should be familiar with all the provisions contained in a contract so that disclosure is accurate and complete.



### ***Responding to “Objections”***

During the course of presenting a product to a customer, the customer may appear to have a negative reaction to certain product features or provisions, and raise questions or make comments about these features or

provisions. Such comments and questions are sometimes referred to as “objections.”

Salespeople in just about every field have the reputation of being practiced in using clever responses to objections. A “good” salesperson, it is thought by some, is able to squelch objections, distracting the customer from his or her concerns by using the right turn of a phrase or asking just the right question in return.

Certainly, the agent does not want to respond to customer concerns in a manner that makes the customer unnecessarily even more concerned. However, clear and accurate disclosure precludes the use of sales tactics that omit or hide material facts from the customer.

Handling customer questions, whether framed as an objection or a simple request for more information, is an important part of the disclosure process. Questions must be responded to directly so that the customer receives the facts necessary to make an informed, rational decision. Some practiced and pat answers meet high standards of disclosure. However, some are meant to divert attention from legitimate concerns. The agent must take the responsibility to identify proper responses to customer concerns.

Some objections are handled by trying to move on to another subject as rapidly as possible. Again, without feeding customer concerns needlessly, the agent should spend enough time on a question or concern to provide an appropriate amount of information. Besides meeting standards of disclosure, such action will help the customer feel he or she is being treated respectfully.

### ***Making the Sale***

Today’s ethical sales environment puts an emphasis on educating a customer, rather than “closing” a customer. Educating involves an appeal to logic and reason. Closing can mean appealing solely to emotion and the dreams or fears the customer has underlying his or her insurance need. Educating does not ignore the emotions involved in an insurance transaction, but does not place undue emphasis on such issues.

Educating a customer does not include ignoring the alternative options a customer may have. The agent who educates customers uses a process of pointing out the benefits to the program or product being offered compared to the alternatives, without resorting to any type of coercion.

Educating a customer may take patience. For example, the situation of the widow who has never had to handle insurance or finances is still commonplace

today. Such a customer may require more time to educate than the financially experienced businessperson who is sold a policy over the lunch hour.

Educating a customer is an ongoing process. It involves establishing a relationship where the agent is viewed as a reliable source to turn to as life brings new insurance needs to the customer. Closing, on the other hand, is sometimes seen as a one-time slam dunking of the customer into the agent's book of business.

"Closing" is not a negative term when used to mean the point in time when the business is asked for. But, the responsible agent avoids any closing process that includes any element of overwhelming the customer through coercion, misrepresentation, omission of material facts, or irrational appeals to emotion.

Today, the agent is seen as one who suggests a product, rather than one who decides for the customer which product is best without giving the customer an opportunity to decide for him or herself. Sometimes one product is obviously better than others for a customer, but even in such a situation the agent must provide the information necessary for the customer to reach that conclusion.

### Confidentiality

When a customer comes to an agent, the customer expects that the information the agent receives will remain confidential. In a prior chapter, the standards for disclosing information in Georgia were discussed. In addition to these and other regulations requiring confidentiality, the agent is ethically responsible to keep customer information confidential. A customer does not want personal information to be made a topic of conversation around the water cooler or at the golf course.

### Service

Customer service is at the heart of a successful, ethical agent's business. Customer service involves treating each customer's needs as important, not focusing solely on the big sales and big deals. Customer service involves timeliness, accuracy and responsiveness to the customer.

### Timeliness

Timely completion of duties was discussed before in the light of fulfilling the duties the insurer expects of the agent. Timeliness also benefits the customer. When a policyholder calls in with a question, puts in for a change of coverage, or makes any other request, timeliness is very important.

### **Accuracy**

Accuracy on the part of the agent benefits the customer because delays in paperwork processing are avoided, policies and changes in coverage will be issued properly, claims will be paid promptly, and so on.

### **Responsiveness**

The customer wants the agent to be responsive to questions or service requests made of the agent. Customer service includes making time for each customer and handling each one's needs carefully.

### **Chapter Three Study Questions**

1. Place an "x" next to each method an agent can use to increase competency:
  - a. continuing education
  - b. accompanying a more experienced agent on customer calls
  - c. earning a professional designation
  
2. True or False. Each insurer authorized to write and writing property insurance in Georgia are required to become and remain a member of the FAIR plan.
  
3. True or False. An agent should never try to persuade a customer to purchase less insurance than the customer thinks he or she needs. \_\_\_\_\_
  
4. According to the NAIC model regulations regarding life policy illustrations, insurers must keep copies of illustrations for issued policies until \_\_\_\_\_ years following the termination of the policy.
  
5. Define "waiver:"
  
6. The parol evidence rule states that \_\_\_\_\_ are considered part of a written agreement by the courts.

7. True or False. It is never appropriate to have a practiced or “pat” answer to a customer question. \_\_\_\_\_

8. Place an “x” next to the activities which are part of educating a customer when making a sale.

a. Pointing out the benefits of the program or product being offered in comparison to alternatives.

b. Ignoring any emotional reasons a customer has for making a decision.

c. Taking the time to responsibly explain the product or program being offered.

d. Never directly asking for the sale.

9. Customer service involves \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ toward the customer.

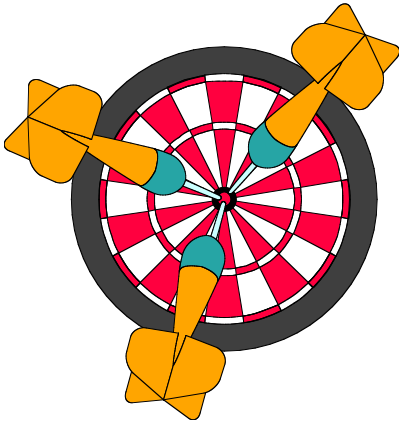




## Chapter Four: Ethical Conflicts of the Insurance Agent

An agent can come across many ethical conflicts as he or she is conducting business. This chapter discusses some of the more common ones an agent may encounter.

### Sales Goals



Because an agent is in the business of selling insurance, he or she often has goals for the amount of premium written each month. These goals may be set by a general agent, by an insurer, or by the agent himself or herself. There may be a minimum production requirement in order to receive a certain amount of salary, short term goals set in order to win a vacation trip, or a tiered compensation system wherein hitting certain levels of production brings a higher commission percentage.

Sales people are often positively motivated by sales goals, bonuses and awards. These goals are not in and of themselves harmful nor unethical. However, when sales or commission goals become more important than the best interests of a customer, the agent may make inappropriate sales for the purpose of earning commission.

*Jim took a quick peek at his watch. Mrs. Reed was pulling out a sheaf of papers from the pocket of her purse, her shaking hands slowing down the process considerably. She murmured to herself, looking up apologetically at Jim.*

*“Sorry this is taking so long. These old hands don’t work the way they used to,” she said.*

*“Oh, no, no, Mrs. Reed,” Jim said with more enthusiasm than he was feeling, “don’t worry about it. You just take your time.” Jim’s lack of enthusiasm was no reflection on Mrs. Reed; he was down because he had found out just before this appointment that he was not going to meet the sales contest goal because a large recession against his production had come in. His wife would be disappointed, he knew. Heck, his wife wasn’t just going to be disappointed – he’d been looking forward to a little vacation himself!*

*Finally, Mrs. Reed got the papers pulled out and handed them over to Jim. As he unfolded them, he started a little in surprise. These documents represented \$150,000 in Certificates of Deposit, just the amount Jim needed to make a \$1,000,000 sales month, qualifying him for a trip for two to Hawaii. And today was the last day of the month!*

*As Jim talked to Mrs. Reed, he discovered she was here talking to Jim because her neighbor had referred her to him after Mrs. Reed's husband has passed away. The Certificates of Deposit made up the bulk of her total savings. She had some money in an interest bearing checking account, but it had been greatly depleted by funeral expenses. Mr. Reed had done most of the financial planning for the family, and Mrs. Reed didn't know what to do with these CDs that were now maturing. Her friend had an annuity, and thought Mrs. Reed might want one, too.*

*Jim looked up at the clock on the wall, watching the time tick away toward 6 PM on the last sales day of the month, toward the end of the last day of the sales contest. He sat back in the chair across the desk from Mrs. Reed, smiled at her and said...*

What should Jim say? He could try to justify to himself moving the entire amount of the CDs into an annuity, leaving Mrs. Reed without money she could access in an emergency unless she wanted to pay a withdrawal charge. Perhaps such an emergency would never occur, he might say to himself.

But, the ethical answer is obvious. Jim needs to make sure Mrs. Reed has enough money set aside in short term accounts to meet emergencies such as a flat tire, a broken refrigerator, or to treat herself to a trip to the beach or to visit her grandchildren. Jim may need to defer making any financial decision with Mrs. Reed until they have more time to take a look at her whole financial situation. He needs to understand her risk tolerance, tax situation, and goals before he suggests placing any money in any type of insurance plan. The point is that Jim must view Mrs. Reed's needs as more important than his own, meaning that he foregoes an immediate, large sale in order to make right sales.

In order to ensure ethical sales are made, besides taking the time to do a complete needs analysis, the agent must accurately disclose product and spend time educating the customer. The customer also expects the agent to maintain confidentiality about any insurance transactions undertaken, and to provide good customer service.

### **Disclosure of Products**

The agent must thoroughly understand the product or products being represented and accurately disclose them. If the agent misrepresents a product, the insurer may be in put in the position of financial loss in order to remedy the misrepresentation made. If significant misrepresentation occurs, the insurer and agent could suffer regulatory fines and/or suspension or revocation of licenses.

### **Making the Sale**

Today's ethical sales environment puts an emphasis on educating a customer, rather than "closing" a customer. Educating involves an appeal to logic and reason. Closing can mean appealing solely to emotion and the dreams or fears

the customer has underlying his or her insurance need. Educating does not ignore the emotions involved in an insurance transaction, but does not place undue emphasis on such issues.

Educating a customer does not include ignoring the alternative options a customer may have. The agent who educates customers uses a process of pointing out the benefits to the program or product being offered compared to the alternatives, without resorting to any type of coercion.

Educating a customer may take patience. For example, the situation of the widow who has never had to handle insurance or finances is still commonplace today. Such a customer may require more time to educate than the financially experienced businessperson who is sold a policy over the lunch hour.

Educating a customer is an ongoing process. It involves establishing a relationship where the agent is viewed as a reliable source to turn to as life brings new insurance needs to the customer. Closing, on the other hand, is sometimes seen as a one time slam dunking of the customer into the agent's book of business.

"Closing" is not a negative term when used to mean the point in time when the business is asked for. But, the responsible agent avoids any closing process that includes any element of overwhelming the customer through coercion, misrepresentation, omission of material facts, or irrational appeals to emotion.

Today, the agent is seen as one who suggests a product, rather than one who decides for the customer which product is best without giving the customer an opportunity to decide for him or herself. Sometimes one product is obviously better than others for a customer, but even in such a situation the agent must provide the information necessary for the customer to reach that conclusion.

### **Confidentiality**

When a customer comes to an agent, the customer expects that the information the agent receives will remain confidential. Georgia has standards for disclosing information in place. In addition to these and other regulations requiring confidentiality, the agent is ethically responsible to keep customer information confidential. A customer does not want personal information to be made a topic of conversation around the water cooler or at the golf course.

### **Service**

Customer service is at the heart of a successful, ethical agent's business. Customer service involves treating each customer's needs as important, not focusing solely on the big sales and big deals. Customer service involves timeliness, accuracy and responsiveness to the customer.

## **Replacement**

The chance to replace policies can come up frequently for an agent. The important factors involved in replacement are important to understand in order to make sure replacement is the right option for a customer.

“Replacement” is generally defined as occurring when an agent knows that a sale will result in an existing life policy:

- being forfeited, surrendered, terminated or allowed to lapse;
- being reissued with a reduction of cash value;
- being converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value through nonforfeiture options or other policy provisions;
- being amended for a reduction in coverage terms or benefits; or
- being used as collateral or being borrowed against for this sale.

When a replacement situation occurs, the agent must consider the following factors: existing policy provisions compared to those of the proposed policy, cost to terminate or otherwise reduce the value of the existing policy, the existing policy’s current and historical returns compared to those of the proposed policy, the dividend rate of the existing policy compared to that of the proposed policy, the guaranteed and current mortality rates of the existing policy compared to that of the proposed policy, the financial ratings of the existing company compared to the financial ratings of the proposed insurer, the tax consequences of replacing the existing policy, the insurance needs of the policyholder, and the current health of the current policyholder.

### **Policy Provisions**

The policy provisions of the two policies should be compared and analyzed. For example, the agent and client should evaluate:

- what premium modes are available;
- how long rates are guaranteed;
- what policy loan provisions exist;
- what riders are available and how much they cost;
- what fees are charged and in what amount;
- the minimum guaranteed rate;
- how the death benefit is calculated;
- whether the policy is participating or non-participating;
- what settlement options are available; and
- what are the terms of suicide and noncontestability clauses which will start anew under a new policy.

### Cost to Terminate or Reduce the Value of the Policy.

The cost to terminate or reduce the value of the policy is an important replacement factor. The existing policy's value may be charged surrender fees if terminated. In addition, the proposed policy may include surrender charges for a period of time beginning at issue. The policyholder needs to understand what surrender fees could be charged under a new policy.

### Rate of Return

The current and historical rates of return of the two policies should be compared. The risks of return also need to be evaluated. For example, the return risk of a variable product is quite different than those of a whole life product.

### Dividend Return

If dividends are paid by the insurers, the dividend rates should also be compared. If only one of the policies in question offer dividends, the relative financial advantage or disadvantage must also be reviewed with the client.

### Guaranteed and Current Mortality Rates.

Life insurance contracts include disclosure of the guaranteed mortality rates of the policy. One policy may have higher current and/or future guaranteed mortality rates than the other. This is can be a significant factor to consider in a replacement situation.



### Financial Ratings

Another important point of comparison is the financial ratings of the two insurers involved, if the replacement involves more than one company. There are four well known insurance rating companies, A.M. Best, Standard and Poors, Moody's and Duff and Phelps. Each of these rating companies reviews the financial status of the insurance company and assigns ratings based on its findings. Although a high rating from an insurance rating company is not a guarantee that an insurer will never have financial difficulties, such a rating is a measure of the current financial condition of an insurer, based on many objective factors.

### A.M. BEST COMPANY, BEST'S INSURANCE REPORTS.

Best's Insurance Reports rate insurance companies on their ability to meet policyholder and contractual obligations. Company ratings range from a high of "A++" down to a low of "F:"

- A++, A+ (superior)
- A, A- (excellent)
- B++, B+ (very good)
- C++, C+ (fair)
- D (below minimum standards)

- E (under state supervision)
- F (in liquidation)

#### MOODY'S INVESTOR SERVICE INSURANCE FINANCIAL STRENGTH RATINGS

Moody's assigns ratings based on the overall financial strength of an insurance company, and therefore, the company's ability to meet obligations to its policyholders. Moody's highest rating is "Aaa" and its lowest "C." Moody rates reflect an opinion of the insurance company's ability to repay punctually senior policyholder claims and obligations. Moody's ratings are identified as follows:

- Aaa (exceptional financial security)
- Aa (excellent financial security)
- A (good financial security)
- Baa (adequate financial security)
- Ba (questionable financial security)
- B (poor financial security)
- Caa (very poor financial security)
- Ca (extremely poor financial security)
- C (extremely poor prospects of ever offering financial security)

Moody's also adds a modifier to each rating of a 1, 2 or 3. Modifier 1 means that the reviewed company ranks at the higher end of its rating category, modifier 2 means that the reviewed company ranks in the mid-range of its rating category, and modifier 3 means that the reviewed company ranks in the lower end of its rating category. Thus, an insurer with a rating Aa1 is somewhat more financially secure than one with an Aa3 rating.

#### STANDARD & POOR'S INSURANCE RATING SERVICES.

Standard & Poor's rates the insurer's claims paying ability. They rate subscribing companies (companies which pay a fee for the rating) from "AAA" to "D." Non-subscriber ratings are from "BBBq" to "Bq."

#### DUFF & PHELPS CREDIT RATING COMPANY, INSURANCE RATING SERVICE

Duff & Phelps assigns claims paying ability ratings which reflect the likelihood that the insurance company will meet its policyholder obligations. Duff & Phelps claims paying ability ratings range from "AAA" to "CCC-."

#### Tax Consequences

Generally, life insurance can be replaced without current tax consequences. As long as a life insurance contract is exchanged for another life insurance policy, or for an annuity contract, or if an endowment contract is exchanged for an annuity or for another endowment contract which will begin payments no later than payments would begin under the exchanged contract, or if an annuity is

exchanged for another annuity contract, a tax-free exchange under IRS Section 1035 rules can be performed. In order to meet the qualifications of a tax-free exchange, certain procedures must be followed, such as having the policy values directly transferred from insurer to insurer. The agent must be careful to follow these procedures. Besides the prospect of taxation on policy gain at termination, outstanding policy loans may be taxable, even if the policy is exchanged under 1035 rules. The policyholder may need to be referred to a tax professional for advice on the tax consequences of replacing a policy.

### Insurance Needs

Sometimes an agent ignores the step of assessing the insurance need when replacement is involved, making the assumption that if a policyholder already has a certain amount or type of insurance, it must be needed. However, the agent should never ignore this vital step, regardless of how much or what type of insurance is currently held. The policyholder may not need the same amount or type of insurance today as when the existing policy was purchased. Some clients may have built up a many assets since their original purchase, and now need insurance for estate planning purposes rather than strictly for the death benefit. Some may legitimately need more coverage than they have presently. Others may need less, or a different type of insurance. The agent cannot justify any recommendation without first performing a needs analysis.

### Current Health

If an insured's health has declined since the existing policy was purchased, comparable coverage may not be as affordable as the existing coverage. Health may even have declined to a point where the insured may not qualify for other coverage. An agent can do a customer a serious disservice by not looking at the aspect of health before any replacement is undertaken.

Insurers will provide the agent with the appropriate replacement forms required by the state. The forms include disclosures and analysis of important replacement factors.

*Sally was seated across the desk from Mr. and Mrs. Albertson. She was completing a financial profile on the couple and was asking them about the current insurance policies they held.*

*"Well, let's see," said Mr. Albertson, "we have a policy purchased when we first married, and then we each have some life insurance through our employers."*

*"Do you know the death benefit amount of each policy?" Sally asked, pen ready to take down the information.*

*“Oh, gee, I guess about \$25,000 on that old policy. Oh, yes,” he said after Mrs. Albertson said something to him Sally couldn’t quite hear, “we also bought some additional insurance a few years back – I think \$75,000 on each of us. And the policies through our employment are equal to our annual salaries.”*

*As Sally asked more questions, she discovered the \$25,000 policy was an old whole life policy, and \$25,000 was the cash value of the policy, not the death benefit. Sally also found the two \$75,000 policies were affordable, suitable policies for the couple. The two were debt-free, had paid off their mortgage, and had only one offspring, a grown daughter. Both were close to retirement. Their estate was valued at under \$600,000. They didn’t really need more life insurance.*

*But, there was that old \$25,000 policy. There must be something she could recommend be done with that...*

What could Sally recommend? Before any recommendation is made, she must go through the steps of reviewing the old policy, its provisions, and the financial and tax consequences of liquidating it. Based on her analysis, she can derive the best course of action to suggest, whether to leave the old policy as is, replace it with another, or liquidate it so that the values can be used to purchase some other product, such as stocks, bonds or mutual funds. Only after taking the time to study the issue will Sally be able to give her best ideas to Mr. and Mrs. Albertson.

The property-casualty agent does not face the same replacement issues as the life agent, since tax consequences, rates of return and surrender charges do not apply to property-casualty policies. The property-casualty agent must take care, though, to carefully follow ethical and regulatory rules when suggesting a policy which will take the place of an existing policy. Policy provisions and premium rates need to be compared to determine if the customer is better off in a new policy. As in all insurance transactions, the agent must not commit any unfair trade practices, such as making malicious statements against another agent or insurer.

### ***Fees and Commission***

Insurance agents earn commissions. Insurance counselors or advisors earn fees or commissions for giving advice about insurance policies or plans. Georgia Code Section 33-23-1(a)(5) prohibits an insurance counselor from receiving fees or commissions from different sources for the same transaction:

*“Counselor” means any person who engages or advertises or holds himself or herself out as engaging in the business of counseling, advising, or rendering opinions as to the benefits promised under any contract of insurance issued or offered by any insurer or as to the terms, value, effect, advantages, or disadvantages under the contract of insurance, other than an actuary or consultant advising insurers. When receiving a fee,*



*commission, or other compensation for this service, such person shall not receive any compensation from any other source on or relating to the same transaction.*

*As used in paragraph (5) of Code Section 33-23-1, the definition of counselor, the term "transaction" refers to coverage or services in the same line or subline of insurance; provided, however, that additional ancillary services for commercial risks in excess of acquisition services shall be considered a separate transaction when such additional ancillary services are disclosed in writing to the insured and approved in advance by the insured. Additional ancillary services shall include, but not be limited to, the following: risk identification; loss measurement; gathering and analysis of loss information; verification of workers' compensation experience modifiers; setting of risk retention levels; development of retention financing plans; development of insurance specifications; negotiation with insurers regarding coverages, costs, and payment options; implementation of retained and transferred risk programs; monitoring of annual program; and insurance audit services.*

The purpose of this legislation and similar legislation in other states is to reduce the likelihood that someone the public views as an objective advisor is being paid by another party with an interest in the outcome of an advisor's opinion.

### **Overstepping Authority**



*Penny was almost through looking over the structures at ABC Business. This risk was very similar to the last case she'd written –same industry, about the same number of structures and employees. The equipment used to manufacture the product was about the same, too, only a little newer here.*

*Penny had been called back to the site on the previous case after the state workplace safety examiner had performed an examination. The examiner had required some new procedures and equipment be installed, and the business owners had called Penny back to see if they qualified for a reduction in premium due to the changes made. They had. Through this experience, Penny had learned a lot about the state safety requirements for this industry.*

*As Penny walked about the current site, she was impressed with what she saw. The newer equipment at this site included safety devices the other business' equipment hadn't had. The overall look of the place was neat and orderly, and the business processes included all the safety requirements Penny had learned the state required when she'd worked on the last case.*

*As Penny finished her inspection report, the plant supervisor approached her. "How's it going? All through?" he asked.*

*“Yes, I think I’ve got all the information I need to develop an insurance plan for your company. I’d like to set up an appointment next week to show you what we can do for you.”*

*“Sure, sure. Hey, listen, we’re expecting the state examiner in anytime – he’s been inspecting other manufacturers in our business, and we’re overdue for a visit. Based on what you’ve seen, can you help us guarantee we won’t have any problems with an inspection? It’s important to us, and I know the boss would be real grateful, if you could help work with us on this.”*

Could Penny “guarantee” the results of a state examination? No. An insurance company inspection, and resulting recommendations and/or underwriting requirements can go a long way toward increasing a company’s chances of passing state workplace examinations. However, an insurance agent or insurance examiner cannot imply that following his or her recommendations will satisfy all state requirements. To do so would be overstepping the authority of that agent.

Other areas where an agent must be careful not to act outside his or her authority are the areas of giving tax or other legal advice. Over the course of a career, an agent may learn quite a bit about the legal and tax matters related to the lines of insurance the agent offers. However, the agent must be careful to use this knowledge in order to know when to refer a customer to a tax or legal professional, and never to use this knowledge to offer tax or legal advice directly.

### ***Independent Agents and Exclusive Agents***

Independent agents face some ethical challenges which are unique from those an exclusive agent faces, and others which are similar. Exclusive agents may feel pressured either by the sales environment in which they work or by their own desire to succeed, to try to make sales to customers which have needs that are better met by products outside those they offer. Or, they might feel challenged to sell the highest commission product as often as possible, including when a lower commission product is better for the customer. The ethical agent will always perform a careful needs analysis and make recommendations based on customer needs. Exclusive agents can also do a service for customers and the insurer by passing on information to management about the kinds of products and features customers are looking for, so that these products and features can be added to an insurer’s product line.

Independent agents, too, can come against the issue of selling the product with the highest commission, rather than the one that is best for the customer. The best interests of the customer must take precedence.

Unlike the exclusive agent, the independent agent has to assume the responsibility of assembling a group of products issued by insurers that the agent believes are the best: the best in product, service, financial stability, with fair commission structures. An exclusive agent, on the other hand, must determine if a single insurer meets his or her criteria in these areas, but once this determination is complete, the exclusive agent is free to concentrate on the products offered by the insurer the agent represents. The independent agent has a great deal more due diligence to perform, since more insurers have to be reviewed prior to the agent representing their products.

### ***Use of State Guaranty Association In Sales***

Life and health insurance agents are prohibited from using the existence of a state guaranty association to induce a customer to buy. In Georgia, Code Section 33-38 describes the purpose and components of the Guaranty Association in the state.

*33-38-1. The purpose of this chapter is to protect policy owners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this chapter, and (3) the association is authorized to assist the Commissioner, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies.*

*33-38-2. (a) This chapter shall provide coverage to the persons specified in subsection (b) of this Code section for direct, nongroup life, health, annuity, and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.*

*(b) Coverage under this chapter shall be provided only:*

*(1) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under paragraph (2) of this subsection; and*

*(2) To persons who are owners of or certificate holders under such policies or contracts or, in the case of unallocated annuity contracts, to the persons who are the contract holders and who:*

*(A) Are residents; or*

*(B) Are not residents, but only under all of the following conditions:*

*(i) The insurers which issued such policies or contracts are domiciled in this state;*

- (ii) Such insurers never held a license or certificate of authority in the states in which such persons reside;*
- (iii) Such states have associations similar to the association created by this article; and*
- (iv) Such persons are not eligible for coverage by such associations.*

All member insurers, which are generally those who issue the types of policies mentioned above covered by the Guaranty Association, must become and remain members of the Association in order to retain their certificates of authority to transact insurance business in Georgia.

The Guaranty Association does not apply to:

- The portion of a variable life insurance or variable annuity contract which is not guaranteed, i.e. if a “fixed account” is guaranteed by the insurer, the provisions of the Guaranty Association will apply. Conversely, the variable sub-accounts of such policies are not covered by the Guaranty Association terms.
- The portion of any policy of contract under which the risk is borne by the policyholder.
- Policies or contracts assumed by an impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.
- Certain policies issued by nonprofit hospital service corporations, nonprofit medical service corporations, prepaid legal services plans, or health maintenance organizations.
- Policies issued by fraternal benefit societies.
- Accident and sickness insurance when written by a property-casualty insurer as part of an automobile insurance contract.
- Unallocated annuity contracts issued to an employee benefit plan covered by the Pension Benefit Guaranty Corporation.
- Any portion of an unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan.

If a domestic insurer becomes an impaired insurer, the Guaranty Association may:

- guarantee or reinsure, or cause to be guaranteed, assumed or reinsured, any or all of the covered policies of the insurer;
- provide money, pledges, notes, guarantees or other means to assure payment of obligations, and
- loan money to the impaired insurer.

If a domestic insurer becomes insolvent, the Guaranty Association will:

- guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the covered policies of the insurer;

- assure payment of contractual obligations of the insurer; and
- provide moneys, pledges, notes, guarantees or other means reasonably necessary to carry out these duties.

If a foreign or alien insurer becomes insolvent, the Association will:

- guarantee, assume or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents;
- assure payment of contractual obligations of the insurer to residents; and
- provide moneys, pledges, notes, guarantees or other means reasonably necessary to carry out these duties.

If a foreign or alien insurer's domicile jurisdiction or state provides protection substantially similar to these statutes for Georgia's residents, the Georgia Guaranty Association is not required to guarantee the insolvent foreign or alien insurer's policies issued to residents.

The maximum amount the Guarantee Association will cover is explained in Code Section 33-38-7(9):

*With respect to any one contract holder covered by an unallocated annuity contract, the association shall be liable for not more than \$5 million in benefits irrespective of the number of such contracts held by that contract holder. With respect to any other covered policy, the aggregate liability of the association on any one life shall not exceed \$100,000.00 with respect to the payment of cash values or \$300,000.00 for all benefits including cash values; provided, however, that with respect to claims under policies written to provide benefits as required under Chapter 9 of Title 34, relating to workers' compensation, such claims shall be in the full amount as provided by such chapter;*

Because the State Guaranty Association provides protection for policyholders in addition to the insurer's guarantees, an agent may want to address the "safety" concerns of a customer by telling the customer all about the Association. However:

*33-38-21. (a) No person, including an insurer or agent or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication; in the form of a notice, circular, pamphlet, letter, or poster; over any radio station or television station; or in any other way, any advertisement, announcement, or statement which uses the existence of the association for the purposes of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. This Code section shall not apply to the association or any other entity which does not sell or solicit insurance.*

*(b) Any person who violates subsection (a) of this Code section may, after notice and hearing and upon order of the Commissioner, be subject to one or more of the following:*

- (1) A monetary penalty of not more than \$1,000.00 for each act or violation, but not to exceed an aggregate penalty of \$10,000.00; or
- (2) Suspension or revocation of his license or certificate of authority.

The agent must be careful not to violate this provision. Insurers have normally researched this issue with the state to determine when the Guaranty Association may be spoken about, e.g., when a customer asks a specific question about the Association. The agent should check with the insurer represented to determine the acceptable methods of communicating with a customer on this issue.

### **Answering Questions**



No one wants to appear as though they do not have answers to questions asked of them. When asked questions, the natural tendency is to attempt to answer the question, especially when an agent feels the need to try to establish credibility with a customer.

Some customers are less patient than others when posing questions and may suggest that they expect an answer “now!” Besides pressure from customers, an agent may put pressure on himself or herself to try to answer all questions at the time a customer asks them. There are times, however, when an agent must do more research before answering a customer question or concern.

One of the most common reasons for complaints against agents is that the customer believes he or she was given incorrect information. Giving incorrect information, if given willfully, is considered misrepresentation.

Some agents find that using some method of reducing self-imposed pressure prior to an appointment helps with the issue of forcing information and other negative sales processes. A successful salesperson has explained that he tells himself prior to an appointment that he doesn’t really need this sale, that there are other sales, etc. He focuses on the customer needs he is trying to meet, and views himself as doing the customer a favor. This puts him in the proper perspective to meet challenges, such as a customer with questions he may need to research prior to making the sale.

Regardless of how an agent feels during a sales or prospecting interview or when handling a service request, the agent must answer questions clearly and accurately, even if that means having to call the customer back or schedule an additional appointment.

### ***Use of Errors and Omissions Insurance***

In a profession as highly regulated and requiring the high standards of behavior as does the insurance profession, it is not unlikely that an agent will, at sometime during his or her career, make an error or omit a necessary task while performing his or her professional duties. Errors and omissions insurance is used to protect an agent against such mistakes.

Insurance agents have a need for errors and omissions insurance because of their professional and fiduciary responsibilities. Insurance agents have many responsibilities toward the customers they work with, including suggesting appropriate coverage, communicating coverage provisions accurately, and submitting premium as the insurer and state laws require, to name a few. Errors and omissions insurance can provide the agent with protection against liability due to negligence, error and omissions. Intentional acts and fraud are not covered by errors and omissions insurance.

Generally, errors and omissions insurance includes an agreement to pay amounts which the insured is legally obligated to pay due to any act, error or omission in professional services rendered. The insured's employees or representatives are also covered in respect to the carrying out of the insured's business. The insurer assumes the right and duty to defend the insured in any claim or suit against the insured which meets the coverage terms. Excluded from coverage are dishonest or fraudulent acts. Also normally excluded are libelous or slanderous acts.

The benefit payments from errors and omissions insurance not only protect the agent from the financial consequences of events covered by the policy, but also serve to protect the agent's customers from any unintended financial loss caused by the agent.

### **Chapter Four Study Questions**

1. True or False. Sales goals are always an unethical practice. \_\_\_\_\_
  
2. Which of the following is a possible ethical action Jim could take after talking to Mrs. Reed. (Refer to the scenario under the heading "Sales Goals.")
  - a. Suggest to Mrs. Reed that she help him complete a needs analysis on herself, that he would then review it, and meet with her next week with his recommendations.
  - b. Suggest to Mrs. Reed that she move the CD funds into an annuity. Jim knows she has a free look period in which she could cancel the annuity, and when he gets back from the trip to Hawaii, he'll meet with her again, and carefully convince her to cancel the annuity and suggest some more appropriate product or more appropriate amount.
  
3. Which of the following circumstances are considered a "replacement" of a life policy? (More than one answer may apply.)
  - a. An existing life policy is forfeited, surrendered, terminated, or allowed to lapse as the result of a life insurance sale.
  - b. An existing life policy is reissued with a reduction of cash value as the result of a life insurance sale.
  - c. An existing life policy is amended for a reduction in coverage terms or benefits as the result of a life insurance sale.
  - d. all of the above are considered replacement.
  
4. Financial rating companies review the \_\_\_\_\_ of insurance companies and assign ratings based on their finding.



5. True or False. When a customer already has a certain amount of insurance in force, the agent does not need to determine the actual amount of insurance the customer needs when the customer is interested in replacing a policy. \_\_\_\_\_

6. "Any person who engages or advertises or holds himself or herself out as engaging in the business of counseling, advising, or rendering opinions as to the benefits promised under any contract of insurance issued or offered by any insurer" is a (an):

- a. adjuster
- b. general agent
- c. insurance counselor
- d. subagent

7. True or False. Once an insurance agent or examiner completes a workplace inspection, the business examined can be guaranteed to pass any state workplace inspections. \_\_\_\_\_

8. Which of the following is an ethical challenges both an exclusive and an independent agent may face?

- a. Pressure to sell the highest commission product when a lower commission product may be more suitable.
- b. The responsibility to assemble a group of products the agent believes are the best, and perform due diligence on each one.

9. True or False. The Guaranty Association does not apply to that part of a variable life insurance or variable annuity contract which is not guaranteed.

\_\_\_\_\_

10. Improper use of information regarding the Guaranty Association by an agent can result in a monetary penalty and/or \_\_\_\_\_ or \_\_\_\_\_ of the agent's license.

11. True or False. Errors and omissions insurance will protect the agent against financial penalties assessed due to dishonest or fraudulent acts. \_\_\_\_\_

## Chapter Five: Resolving Ethical Conflicts

The potential ethical conflicts that an agent may encounter can be innumerable, beyond the ability of any course to cover. This chapter provides some basic guidelines to apply to any insurance transaction an agent may be conducting, including those which may contain an ethical conflict.

### ***Know and Follow the Law***

*"Knowledge is a treasure, but practice is the key to it."*

*- Proverb*



The ethics of the agent are governed by several pieces of trade practices legislation. Much of this legislation is common to most states, in part because the National Association of Insurance Commissioners has developed model laws related to many of these practices. Other legislation is based on federal law. It is important for the agent to be familiar with state and federal laws relating to insurance.

Important regulations of which the agent must be aware include those regarding:

- misrepresentation
- improper premium handling
- committing insurance fraud
- cheating to obtain or renew a license
- overinsuring
- monitoring powers of the Commissioner
- illustrations
- malicious statements against others in the insurance business
- boycott, coercion and intimidation
- falsifying records
- unfair discrimination
- rebating
- disclosure of information
- twisting and churning
- accepting applications with misrepresentations
- false advertising
- unfair claims settlement practices

The state insurance and administrative codes can be checked in order to learn the specifics on these and other legal requirements. Continuing education classes may be taken which discuss the legal framework in which the agent must work.

The insurer or insurers the agent represents are the source to go to in order to obtain appropriate state required disclosure statements, replacement forms and other forms. If the agent is unsure whether such a form is needed, it is important that the insurer is contacted with any questions.

Besides knowing the law, the agent must, of course, follow the law. The regulators, insurers, and the public all expect the agent to meet the standards of the profession for which the agent is licensed.

### **Know and Communicate the Product's Features**

*"It is more from carelessness about truth than from intentional lying,  
that there is so much falsehood in the world."*

*- Samuel Johnson to James Boswell*



A large number of customer complaints against agents involve the miscommunication or misrepresentation of a policy's features. When new products are introduced, or an agent is offering products or plans in a new line of business, it is important that the agent study the products and plans carefully before offering them to the public. The agent must be sure of the facts about the products he or she offers, and able to accurately answer questions customers may have about them. There are times the agent may need to do some research before answering questions to make sure the correct information is supplied.

### **Misrepresentation of a Policy**

An agent may not misrepresent an insurance policy. Section 33-6-4(a)(2) prohibits misrepresentation in the following manner:

Georgia Code



*(2) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued, the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon; making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies; making any misleading representation or any misrepresentation as to the financial condition of any insurer, as to the legal reserve system upon which any life insurer operates; using any name or title of any policy or class of policies misrepresenting the true nature thereof; or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce the policyholder to lapse, forfeit, or surrender his insurance. A dividend estimate prepared on company forms and clearly indicating, in type equal in size to that used in figures showing amounts of estimated dividends, that*

*the dividends are based on estimates made by the company based upon past experience of the company shall not be considered misrepresentation and false advertising within the meaning of this paragraph.*

### **Accepting Applications with Misrepresentation**

An agent cannot knowingly accept applications with misrepresentations. Those responsible for agents must instruct and require that agents incorporate all material facts relevant to the risk in an application. The agent must incorporate into an application all relevant facts known to the agent, or which could be known by “proper diligence” (*Code Section 33-6-4(b)(9)*). Agents must not be encouraged to accept applications which contain material misrepresentations nor which do not include material information.

Misrepresentations are a serious matter because they can cause an insurer to issue policies for which they do not have sufficient financial resources. If an insurer carries high risk policies without being aware of them, insufficient reserves will be put aside. This condition can harm all policyholders of the insurer as well as the public at large. State and federal governments can be impacted by an insurer being unable to meet its obligations, since the government may have to step in and provide financial help to citizens who suffer financial harm in a catastrophe if the insurer is unable to do so. This means taxpayers can also be impacted by the insolvency of an insurer.

### **Know and Follow Company Policy**

*“For there is a proper time and procedure for every matter”  
- King Solomon, Ecclesiastes*



Following company policy protects the insurer from the agent performing unauthorized activities, and also protects the agent from inadvertently taking incorrect action.

The insurer gives the agent several powers to act on the insurers behalf. The agent has the power to *solicit business, disclose product features* during the selling process, *collect premium*, and *perform ongoing customer service* on behalf of the insurer.

### **Soliciting Insurance**

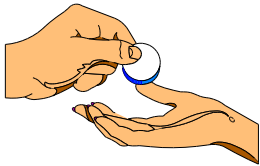
The agent may solicit potential customers through several marketing channels. The agent may use direct mail, telephone solicitation, seminars, and customer or professional referrals to contact customers. Each of these methods of solicitation have ethical and legal requirements related to their use. For example, individuals may request that their names not be part of direct mail or telephone

solicitation lists. The agent is both ethically and legally barred from soliciting such individuals through the mail or by telephone. The insurer expects that an agent representing it will solicit responsibly and legally.

### Disclosure of Products

The insurer gives the agent the power to disclose product features, benefits, provisions and fees to applicants and policyholders. This represents the central responsibility of the agent on behalf of the insurer. The agent must thoroughly understand the product or products being represented and accurately disclose them. If the agent misrepresents a product, the insurer may be in put in the position of financial loss in order to remedy the misrepresentation made. If significant misrepresentation occurs, the insurer could suffer regulatory fines and/or suspension or revocation of license.

### Premium Collection



Agents may collect premium for the insurer. In some cases, agents collect initial premium only. Other agents may collect additional and renewal premium as well. Collecting premium is an important trust that both the insurer and the customer places in the agent.

Misuse of premiums collected is prohibited in the Georgia Code in Section 33-6-5(6):

Georgia Code



*(A) No person shall knowingly collect any sum as premium or charge for insurance, which insurance is not then provided or not in due course to be provided subject to acceptance of the risk by the insurer by an insurance policy issued by an insurer as permitted by*

*this title.*

*(B) No person shall knowingly collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, which sum is specified in rates as filed with and approved by the Commissioner. In cases where classifications, premiums, or rates are not required by this title to be filed and approved:*

*(i) The premiums and charges for insurance, except insurance written in accordance with Chapter 5 of this title, shall not be in excess of or less than those specified in the policy and as fixed by the insurer; and*

*(ii) The premiums and charges for insurance written in accordance with Chapter 5 of this title shall not be in excess of or less than those specified in the policy.*

Section 33-23-21 also includes regulations regarding premium collection. If an agent performs any of the following actions, his or her license may be suspended or revoked:

*(4) Has misappropriated, converted to his or her own use, or illegally withheld money belonging to an insurer, insured, agent, agency, applicant or a beneficiary;...*

*(13) Has failed or refused, upon written demand, to pay over to any insurer, agent, agency, applicant, beneficiary, or insured any moneys which belong to such insurer, agent, agency, applicant, beneficiary, or insured.*

The agent must follow both state regulations and the insurer's requirements in collecting and remitting premium.

### Performing Customer Service

Another important power the insurer gives the agent is to perform customer service duties on behalf of the insurer. Customer service can include administrative duties such as answering policyholder questions, forwarding written change of address requests, supplying appropriate forms and providing phone numbers to the insured. It can also include inspecting property, putting a risk management program into place, or adjusting a claim. The insurer trusts the agent to perform these duties as company policy directs and within the professional, ethical and legal requirements of the position.

### ***Work in the Best Interest of the Customer***

Working in the best interest of others summarizes most of the many insurance regulations and is the principle on which most of the laws are based. If an agent works for the customer's best interest, the agent will not intentionally:

- misrepresent a product
- coerce or intimidate to make a sale
- twist or churn to make a commission
- sell too much insurance
- provide deceptive illustrations
- falsify records
- disclose confidential information

and so on.

Rather, working for the best interests of the customer will result in ethical practices like these:

- selling to needs
- obtaining the education necessary to work in good faith with customers
- disclosing risks, fees and features of products clearly so that the customer understands what is being suggested
- providing accurate illustrations and explaining their meaning
- keeping confidential information confidential

- completing applications correctly and submitting them in a timely fashion
- responding to customer service requests promptly
- collecting the proper amount of premium and turning it over to the insurer as procedure requires
- avoiding all behavior that can harm a customer, including dishonesty and fraud

### ***Be Loyal to the Insurer***

If the agent is loyal to the insurer or insurers he or she represents, the agent will not:

- accept applications with misrepresentations
- write unprofitable business
- submit applications without complete information and all necessary accompanying documents
- be disorganized in the keeping of records or the following up of company requests
- misrepresent the insurer's products
- act outside the authority the insurer has given the agent

### ***Be Courageous***

Being ethical can sometimes mean taking the more difficult route. It can mean being at odds with a coworker, a manager, or a customer. It takes courage to stick to that which the agent believes is right, even when others are, knowingly or unknowingly, encouraging unethical behavior. The agent may have to turn away business, may have to decide to leave certain employment situations, or may even be in the uncomfortable position of having to negatively report to an authority about unethical workplace practices.

### ***Be Honest***

*"He that loseth his honestie hath nothing else to lose."*

*- John Lyly, Euphues*



Honesty will keep an agent from answering questions before he or she knows the answer, from misrepresenting features of a product, from falsely advertising and from other unfair trade practices. In determining the ethical answer to a conflict, the honest approach is always the framework within which to work.



## **Results of Ethical Behavior**

In order to be an ethical insurance agent, the agent must accept the idea that doing the right thing brings reward, and doing the wrong thing brings negative consequences.

Some of the rewards of doing the right thing include:

### **Goodwill**

*"Goodwill is the one and only asset the competition cannot undersell or destroy."*

*- Marshall Field*




Customer goodwill is not only pleasant, but for the salesperson, can result in repeat business and referrals. People like to deal with someone they trust and who they perceive will do the best for them.

### **Respected Reputation**

*"I leave my character behind me."*

*- Richard Brinsley Sheridan*



Besides the goodwill of customers, maintaining a good reputation is important in dealing with insurers, competition, and others within the industry. Although an agent may be very satisfied with his or her current employment situation, there are circumstances which may arise which can cause an agent to have to seek another position. Having a respected reputation gives the agent more opportunity to gain other employment, if necessary, or to move up to new opportunities and responsibilities where he or she is currently employed. Those who mar their reputations limit opportunity in places where their reputations are known.

### **Business that Lasts**

An agent who takes the time to make the right sales experiences fewer recissions, cancellations and terminations than the agent who sells the wrong product, or the wrong amount, or to the wrong customer. A certain amount of cancellations are to be expected, but many can be avoided by taking the time to make sure the

customer's needs are being properly met. Not only will business last, but the satisfied customer is much more likely to come back to that agent with more business in the future.

## Self-Respect

*"This above all: to thine own self be true,  
And it must follow, as the night the day,  
Thou canst not be false to any man."  
- William Shakespeare, Hamlet*



Self-respect in the life of the professional agent permeates all his or her business and personal dealings. The self-esteem that comes from working with integrity, honesty and helping the customer provides job satisfaction and motivation to continue in the profession. Enjoyment of the profession is anchored in self-respect.

### **Chapter Five Study Questions**

1. Which of the following are prohibited activities for an insurance agent?  
(More than one answer may apply.)

- a. misrepresentation
- b. fraud
- c. cheating on an insurance exam
- d. making malicious statements against others in the insurance business
- e. falsifying records
- f. unfair discrimination
- g. rebating
- h. charging a different premium for applicants in different risk classes
- i. accepting applications with misrepresentations

2. A common reason for customer complaints against agents involve \_\_\_\_\_ or \_\_\_\_\_.

3. Following company policy protects the \_\_\_\_\_ from inadvertently taking incorrect action.

4. Place an "x" next to each ethical practice listed below:

- a. selling to needs
- b. misrepresenting a product
- c. disclosing risks, fees and features of a product clearly
- d. coercing or intimidating to make a sale
- e. collecting the proper amount of premium
- f. selling too much insurance

5. Being ethical may take ( more courage / less courage ) than acting unethically.

6. Which of the following are rewards for an agent acting ethically? (More than one answer may apply.)

- a. Goodwill
- b. Respected Reputation
- c. Business That Lasts
- d. Self Respect



## **Appendix: Important Georgia Code Provisions**

### ***Suspension or Revocation of an Agent's License***

CODE SECTION 33-23-21.

*A license, other than a probationary license, may be refused or a license duly issued may be suspended or revoked by the Commissioner if the Commissioner finds that the applicant for or holder of the license:*

- (1) Has violated any provision of this title or of any other law of this state relating to insurance;*
- (2) Has intentionally misrepresented or concealed any material fact in any application for a license or on any form filed with the Commissioner;*
- (3) Has obtained or attempted to obtain the license by misrepresentation, concealment, or other fraud;*
- (4) Has misappropriated, converted to his or her own use, or illegally withheld money belonging to an insurer, insured, agent, agency, applicant, or a beneficiary;*
- (5) Has committed fraudulent or dishonest practices;*
- (6) Has materially misrepresented the terms and conditions of an insurance policy or contract;*
- (7) Has failed to pass an examination pursuant to this article, or cheated on any examination required for a license;*
- (8) Has failed to comply with or has violated any proper order, rule, or regulation, issued by the Commissioner, including any order issued by the Commissioner or the Commissioner's designated representative during the course of any administrative hearing proceeding;*
- (9) Is not in good faith carrying on business as an agent or subagent, but, on the contrary, is holding such license for the purpose of securing rebates or commissions or controlled business;*
- (10) Is not in good faith carrying on business as a licensee under this chapter;*
- (11) Has shown lack of trustworthiness or lack of competence to act as an licensee under this chapter;*
- (12) Has knowingly participated in the writing or issuance of substantial overinsurance of any property insurance risk;*
- (13) Has failed or refused, upon written demand, to pay over to any insurer, agent, agency, applicant, beneficiary, or insured any moneys which belong to such insurer, agent, agency, applicant, beneficiary, or insured;*

(14) *Has failed to comply with Code Section 33-2-12 or 33-2-13 or has refused to appear or to produce records in response to a written demand by the Commissioner sent by registered or certified mail to the last known address of the licensee as shown in the records of the Commissioner;*

(15) *Has been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (16) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;*

(16) *Has been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:*

(A) *First offender treatment without adjudication of guilt pursuant to the charge was granted; or*

(B) *An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.*

*The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;*

(17) *Has had a license to practice a business or profession licensed under the laws of this state or any other state, territory, country, or the United States revoked, suspended, or annulled by any lawful licensing authority other than the Commissioner; had other disciplinary action taken against him or her by any such lawful licensing authority other than the Commissioner; was denied or refused a license by any such lawful licensing authority other than the Commissioner pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the Commissioner pursuant to disciplinary proceedings;*

(18) *Has failed to notify the Commissioner within 60 days of any event referred to in paragraph (15), (16), or (17) of this Code section; or*

(19) *Is not in compliance with an order for child support as defined by Code Section 19-6-28.1 or 19-11-9.3; for violations of this paragraph only, any hearing and appeal procedures conducted pursuant to such Code sections shall be the only such procedures required to suspend, deny, or revoke any license under this title.*

### **Unfair Methods of Competition and Unfair and Deceptive Business Practices**

CODE SECTION 33-6-4.

*(a) As used in this Code section, the term "policy" means any insuring bond issued by an insurer.*

*(b) The following acts or practices are deemed unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:*

*(1) Making, publishing, disseminating, circulating, or placing before the public or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or in any other way an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which statement, assertion, or representation is untrue, deceptive, or misleading;*

*(2) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued, the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon; making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies; making any misleading representation or any misrepresentation as to the financial condition of any insurer, as to the legal reserve system upon which any life insurer operates; using any name or title of any policy or class of policies misrepresenting the true nature thereof; or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce the policyholder to lapse, forfeit, or surrender his insurance. A dividend estimate prepared on company forms and clearly indicating, in type equal in size to that used in figures showing amounts of estimated dividends, that the dividends are based on estimates made by the company based upon past experience of the company shall not be considered misrepresentation and false advertising within the meaning of this paragraph;*

*(3) Making, publishing, disseminating, or circulating directly or indirectly or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or substantially misrepresents the financial condition of an insurer and which is calculated to injure any person engaged in the business of insurance;*

*(4) Entering into any agreement to commit or by any concerted action committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;*

*(5) Filing with any supervisory or other public official or making, publishing, disseminating, circulating, delivering to any person, or placing before the public or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with the intent to deceive;*

*(6) Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of the insurer;*

*(7) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency or company stock or other capital stock, benefit certificates or shares in any common-law corporation, securities, or any special or advisory board contracts of any kind promising returns and profits as an inducement to insurance;*

*(8)(A)*

*(i) Making or permitting any unfair discrimination between individuals of the same class, same policy amount, and equal expectation of life in the rates charged for any contract of life insurance or of life annuity, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.*

*(ii) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or sickness insurance, in the benefits payable thereunder, in any of the terms or conditions of the contract, or in any other manner whatever.*

*(iii) Making or permitting any unfair discrimination in the issuance, renewal, or cancellation of any policy or contract of insurance against direct loss to residential property and the contents thereof, in the amount of premium, policy fees, or rates charged for the policies or contracts when the discrimination is based solely upon the age or geographical location of the property within a rated fire district without regard to objective loss experience relating thereto.*

*(B) Knowingly permitting or offering to make or making any contract of insurance or agreement as to the contract other than as plainly expressed in the contract issued thereon; paying, allowing, giving, or offering to pay, allow, or give directly or indirectly, as inducement to any contract of insurance, any rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract, except in accordance with an applicable rate filing, rating plan, or rating system filed with and approved by the Commissioner; giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such insurance or in connection therewith any stocks, bonds, or other securities of any company, any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract; or receiving or accepting as inducement to contracts of insurance any rebate of premium payable on the contract, any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement not specified in the contract.*



(C) Nothing in subparagraphs (A) and (B) of this paragraph shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interest of the company and its

policyholders;

(ii) In the case of life or accident and sickness insurance policies issued on the industrial debit or weekly premium plan, making allowance in an amount which fairly represents the saving in collection expense to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer;

(iii) Making a readjustment of the rate of premium for a policy based on the loss or expense experienced at the end of the first or any subsequent policy year of insurance thereunder, which adjustment may be made retroactive only for the policy year;

(iv) Issuing life or accident and sickness insurance policies covering bona fide employees of the insurer at a rate less than the rate charged other persons in the same class;

(v) Issuing life or accident and sickness policies on a salary-saving, payroll deduction, preauthorized, postdated, automatic check, or draft plan at a reduced rate commensurate with the savings made by the use of such plan;

(vi) Paying commissions or other compensation to duly licensed agents or brokers or allowing or returning dividends, savings, or unabsorbed premium deposits to participating policyholders, members, or subscribers;

(vii) Paying by an insurance agent of part or all of the commissions on public insurance to a nonprofit association of insurance agents which is affiliated with a recognized state or national insurance agents' association, which commissions are to be used in whole or in part for one or more civic enterprises;

(9) Failing to instruct and require properly that agents shall, in the solicitation of insurance and the filling out of applications of insurance on behalf of policyholders, incorporate therein all material facts relevant to the risk being written, which facts are known to the agent or could have been known by proper diligence;

(10) Encouraging agents to accept applications which contain material misrepresentations or conceal material information which, if stated in the application, would prevent issuance of the policy or which would void a policy from its inception according to its terms even though premiums had been paid on the policy;

(11) Any insurer or agent of same becoming a party to requiring or imposing as a condition to the sale of real or personal property or to the financing of real or personal property, as a condition to the granting of or an extension of a loan which is to be secured by the title to or a lien of any kind on real or personal property, or as a condition to the performance of any other act in connection with the sale, financing, or lending, whether

*the person thus acts for himself or for anyone else, that the insurance or any renewal thereof to be issued on said property as collateral to said sale or loan shall be written through any particular insurance company or agent, provided that this paragraph shall not apply to a policy purchased by the seller, financier, or lender from his or its own funds and not charged to the purchaser or borrower in the sale price of the property or the amount of the loan or required to be paid for out of his personal funds; provided, further, that such seller, financier, or lender may disapprove for reasons affecting solvency or other sensible and sufficient reasons, the insurance company selected by the buyer or borrower. This paragraph shall not apply to title insurance;*

(12)

*(A) Representing that any insurer or agent is employed by or otherwise associated with any medicare program as defined in Code Section 33-43-1 or the United States Social Security Administration or that any insurance policy sold or offered for sale has been endorsed or sponsored by the federal or state government.*

*(B) Knowingly selling or offering to sell medicare supplement insurance coverage as defined in Code Section 33-43-1 which is not in compliance with the provisions of Chapter 43 of this title, relating to medicare supplement insurance, or the rules and regulations promulgated by the Commissioner pursuant to Chapter 43 of this title.*

*(C) Representing that any individual policy is a group policy or that the insurer, agent, or policy is endorsed, sponsored by, or associated with any group, association, or other organization unless such is, in fact, the case.*

*(D) Knowingly selling to Medicaid recipients substantially unnecessary coverage which duplicates benefits provided under the Medicaid program without disclosing to the prospective buyer that it may not be to the buyer's benefit or that it might actually be to the buyer's detriment to purchase the additional coverage;*

(13)

*(A) Making direct response advertising by an insurer, including radio or television advertisement, of any individual or group life insurance policy in which computation of the death benefit is of such a technical nature that such death benefit cannot reasonably be properly presented in the advertisement and understood by a member of the insuring public. Policies, other than variable life or other interest sensitive policies, which provide for multiple changes in death benefits, combinations of increasing and nonuniformly decreasing term insurance, or increasing life insurance benefits equal to or slightly greater than the premiums paid during the early years of the coverage combined with accidental death benefits are types of contracts within the purview of this subparagraph. Additionally, any life insurance policy which cannot be truthfully, completely, clearly, and accurately disclosed in an advertisement falls within this subparagraph.*

*(B) Making direct response advertising by an insurer, including radio or television advertisement, of any individual or group accident and sickness or life insurance policy which is misleading in fact or by implication that the coverage is "guaranteed issue"*

*when there are conditions to be met by those persons to be insured, such as limited medical questions or other underwriting guidelines of the insurer.*

*(C) Making direct response advertising by an insurer, including radio or television advertisement, of any individual or group accident and sickness or life insurance policy where such advertisement has not been approved for use in this state by the Commissioner of Insurance; or*

*(14) Failing to disclose in printed advertising material that medical benefits are calculated on the basis of usual, customary, and reasonable charges.*

*(c) Any person violating this Code section by making unlawful, false representations as to the policy sold shall be guilty of a misdemeanor.*

### **Unfair Claims Settlement Practices**

CODE SECTION 33-6-34.

*Any of the following acts of an insurer when committed as provided in Code Section 33-6-33 shall constitute an unfair claims settlement practice:*

*(1) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;*

*(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;*

*(3) Failing to adopt and implement procedures for the prompt investigation and settlement of claims arising under its policies;*

*(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;*

*(5) Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;*

*(6) Refusing to pay claims without conducting a reasonable investigation;*

*(7) When requested by the insured in writing, failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;*

*(8) When requested by the insured in writing, making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;*

*(9) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form; provided, however, this paragraph shall not preclude an insurer from obtaining sworn statements if permitted under the policy;*

(10) When requested by the insured in writing, failing in the case of claims denial or offers of compromise settlement to provide promptly a reasonable and accurate explanation of the basis for such actions. In the case of claims denials, such denials shall be in writing;

(11) Failing to provide forms necessary to file claims within 15 calendar days of a request with reasonable explanations regarding their use;

(12) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by the insurer are performed in a workmanlike manner;

(13) Indicating to a first-party claimant on a payment, draft check, or accompanying letter that said payment is final or a release of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first-party claimant and the insurer as to coverage and amount payable under the contract; and

(14) Issuing checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which releases the insurer or its insured from its total liability.

## **Insurance Fraud**

CODE SECTION 33-1-9.

(a) Any natural person who knowingly or willfully:

(1) Makes or aids in the making of any false or fraudulent statement or representation of any material fact or thing:

(A) In any written statement or certificate;

(B) In the filing of a claim;

(C) In the making of an application for a policy of insurance;

(D) In the receiving of such an application for a policy of insurance; or

(E) In the receiving of money for such application for a policy of insurance for the purpose of procuring or attempting to procure the payment of any false or fraudulent claim or other benefit by an insurer;

(2) Receives money for the purpose of purchasing insurance and converts such money to such person's own benefit;

(3) Issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders; or

(4) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer commits the crime of insurance fraud.

(b) In any prosecution under this Code section, the crime shall be considered as having been committed in the county of the purported loss, in the county in which the insurer or

*the insurer's agent received the fraudulent or false claim or application, in the county in which money was received for the fraudulent application, or in any county where any act in furtherance of the criminal scheme was committed.*

*(c)(1) Except as provided in paragraph (2) of this subsection, a person convicted of a violation of subsection (a) of this Code section shall be guilty of a misdemeanor.*

*(2) Where the claim, benefit, or money referred to in subsection*

*(a) of this Code section exceeds an aggregate of \$500.00, a person convicted of a violation of subsection (a) of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years, or by a fine of not more than \$5,000.00, or both.*

## **Glossary**

### **Accident Insurance**

Insurance which protects against financial loss due to bodily harm.

### **Aleatory Contract**

A contract which contains promises based on an uncertain event.

### **Alien Insurer**

An insurer which is formed in another country and does business in the state.

### **Application**

An insurance form which is completed using information from the prospective insured pertaining to the risk to be insured.

### **Captive Agent**

Also known as an exclusive agent. An agent under a contract with an insurer or affiliated insurers and which contract limits the agent to represent that insurer or insurers.

### **Casualty Insurance**

Lines of insurance that protect against financial loss due to legal liability and also include lines such as auto, crime, Workers Compensation, and surety.

### **Churning**

Sales practice which involves selling a policy to replace another policy from the same insurance company for the purpose of generating a new commission for the agent.

### **Coinsurance**

A provision found in property insurance which requires that the property be insured for an amount equal to a specified percentage of the property value at the time of loss, or the insured will have to pay for part of the loss incurred.

### **Contract of Adhesion**

A contract wherein one party adheres to the terms another party dictates.

### **Domestic Insurer**

An insurer which is formed in the state and which does business in the state.

### **Ethics**

A body of moral principals.

**Exclusive Agent**

See Captive Agent

**Fraternal Benefit Society**

An insurer incorporated without capital stock, which exists solely for the benefit of its own members, and which operates on the lodge system.

**Foreign Insurer**

An insurer which is formed in another state and does business in the state.

**Free-Look Period**

The period of time from the date a contract is issued the policyholder has to review the contract and cancel the coverage without paying a surrender fee or suffering any reduction of premium.

**Health Insurance**

Insurance which protects against financial loss due to sickness or bodily injury. Also known as "Accident and Health," or "Accident and Sickness."

**Insurance Services Office**

A nonprofit insurance organization serving the property-casualty industry through gathering statistics, creating policy forms, developing standardized contract language and contracts, providing loss costs and conducting rate inspections.

**Life Insurance**

Insurance which protects against the risk of financial loss due to death.

**Lloyd's Association**

Named after an insurance association formed in London, an association of individuals or groups of individuals who volunteer to underwrite insurance contracts. Each individual or group is liable for the losses insured by the contracts underwritten.

**Misrepresentation**

Written or oral statements made by the insured, the insurer, or a representative of the insurer, which misstates information regarding the risk, terms, coverages, benefits, returns, or other material fact related to the contract.

**Mutual Insurer**

An insurer which is formed without capital stock, and is not owned by stockholders but by its policyholders. The policyholders share in the profits of the company through premium reduction or dividends.

**National Association of Insurance Commissioners**

Organization comprised of state insurance commissioners which drafts model insurance regulation and collects and reports statistics and other information on the insurance industry.

**Premium**

The amount paid to keep an insurance policy in force.

**Property Insurer**

Insurance which protects against financial loss due to property damage.

**Rescission**

The cancellation of an insurance contract.

**State Guaranty Association**

An association governed by individual state regulations, wherein member insurers are responsible for contractual obligations to policyholders if another member is unable to meet them.

**Stock Insurer**

An insurer formed by the issuance of capital stock. The insurer is owned by the stockholders.

**Tax-Free 1035 Exchange**

Internal Revenue Code regulations which allow the tax-free exchange of life insurance policies under specified conditions.

**Twisting**

Sales practice which involves selling a policy to replace another policy issued by a different insurer for the purpose of generating a new commission for the agent.

**Variable Life Insurance**

Insurance which bases cash values on the performance of sub-accounts selected by the policyowner.



## Answers to Study Questions

### Chapter One

1. d
2. financial instability, false advertising, obligations
3. a. x, c. x, d. x (all except b.)
4. any four of the following: ethical solicitation and sales, competence, appropriate sales, confidentiality, good customer service
5. fair trade
6. a. x, c. x (all except b.)
7. additional purchases, referrals

### Chapter Two

1. express, implied and apparent authority
2. a, c and d
3. false
4. a, b, and c are all field underwriting responsibilities
5. complete information
6. a. avoiding risk.  
b. controlling risk  
c. transferring risk  
d. retaining risk
7. controlling
8. investigative report
9. consumer (or credit) report
10. c
11. false
12. b

### Chapter Three

1. a. x, b. x, c. x
2. true
3. false
4. three
5. A waiver is the voluntary act of giving up a right, claim or privilege.
6. oral agreements
7. false
8. a. x, c. x
9. timeliness, accuracy, responsiveness

### Chapter Four

1. false

2. a
3. d
4. financial status
5. false
6. c
7. false
8. a
9. true
10. suspension, revocation
11. false

### **Chapter Five**

1. all are prohibited activities, except h.
2. miscommunication , misrepresentation
3. agent
4. a. x, c. x, e. x
5. more courage
6. a, b, c and d