

PRODUCER FEES AND OTHER QUESTIONS

Downstate NY Chapter
NAHU

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General topics

- *Agents vs. brokers*
- *Service fee arrangements*
- *Consulting fees*
- *Rebating and tie-ins/inducements*
 - *“Free services”*
 - *Banking services*
- *Commission sharing*



New York Types of Producers

- Insurance agents
- Insurance brokers
 - Excess line brokers
- Reinsurance Intermediaries
- Limited Licensees

Agents & Brokers

■ AGENTS

- *REPRESENTS INSURER*
- *MUST BE APPOINTED BY INSURER*
- *MAY NOT CHARGE SERVICE FEE*
- *MAY CHARGE CONSULTING FEE*

■ BROKERS

- *REPRESENTS INSURED*
- *DOES NOT HAVE TO BE APPOINTED*
- *MAY CHARGE SERVICE FEE*
- *MAY CHARGE CONSULTING FEE*

BROKER SERVICE FEES

- NYIL Section 2119(c)
- ANY COMPENSATION OTHER THAN COMMISSION DEDUCTIBLE FROM PREMIUM
- FOR SALE OR OTHER INSURANCE SERVICES
- May be % of premium provided:
 - Agreement clearly explains whether policy or other changes would result in change in fee
- ***BROKER ONLY--Agents may not collect service fees except for NYAIP business***

CONSULTING FEES

- NYIL Section 2119 (a) & (b)
- For providing insurance advice and recommendations
- May be charged by:
 - *Licensed Broker*
 - *Licensed Agent*
 - *Licensed Consultant*

CONSULTING FEES

■ IF AGREEMENT PROVIDES:

- MAY OFFSET FEE AGAINST COMMISSIONS ON *SUBSEQUENT* SALE
- MAY NOT RECEIVE COMMISSION IF CONSULTING FEE RECEIVED

Note: premium unaffected

ALL FEE AGREEMENTS

- MINIMUM 3 YRS RETENTION PERIOD AFTER SERVICE FULLY PERFORMED
- IN WRITING
- SIGNED BY PERSON TO BE CHARGED
- Agreement must clearly specify amount or extent of compensation to be charged
- Need not be separate form but must be clear and not misleading

ALL FEE AGREEMENTS

- Fees should be reasonable
 - NYAIP service fee private passenger \$40
- *Different insureds should not be charged different amounts for same services*
 - Fees may reflect differing factors such as:
 - Size of insured (where relevant)
 - Type or amount of services
 - Complexity of services
 - Etc.



REBATING AND TIE-INS IMPERMISSIBLE INDUCEMENTS

- General prohibition against:
 - Providing unspecified inducement or “tie-in”
 - Providing rebate of premium (including commission)



REBATING AND TIE-INS IMPERMISSIBLE INDUCEMENTS

- NYIL 2324—most property/casualty insurance
- NYIL 4224—life insurance, health insurance, annuities
- NYIL 6409—title insurance
- NYIL 6504—mortgage insurance
- NYIL 2502—transactions involving banks



REBATING AND TIE-INS IMPERMISSIBLE INDUCEMENTS

- Prohibition VERY broad
- Exception for p/c insurance:
 - OK to give “keepsake” provided:
 - Article of merchandise
 - Value \$15 or less
 - Name conspicuously stamped on article
 - No keepsake exception for health, life



REBATING AND TIE-INS IMPERMISSIBLE INDUCEMENTS

- May not:
 - Provide any special benefit to insureds or potential insureds
 - Provide special discounts to insureds or potential insureds
 - Offer to provide services or other incentives in conjunction with insurance



REBATING AND TIE-INS IMPERMISSIBLE INDUCEMENTS

- May not:
 - offer to lower commission and thereby lower premium
 - pay premium to induce business
 - Condition raffle entry on sale
 - OK to provide raffle to general public
 - Offer to provide contribution to charity if sale is made

SERVICES

- OK to provide services for “free” provided that:
 - Within the types of services *normally* performed by an insurer, agent or broker in connection with the sale of that type of insurance
 - Same services provided to all similarly situated insureds
 - Does not include ancillary or auxiliary services that do not directly relate to the insurance activities



NOT OK “FREE” SERVICES

- ❑ Human resource services involving non-insurance benefits such as discipline, leave, business policy and practices, etc.
- ❑ Employee benefit statement
- ❑ Flexible spending administration services
- ❑ Advice regarding compliance with laws regarding human resource matters

OK “FREE” SERVICES

- Employee benefit portal:
 - Allowed employees under group policy to directly access insurer to enroll and terminate employees and update employee status
 - Access to programs to assist with govt compliance re health & life insurance benefits
 - Certain COBRA services:
 - Billing former employees
 - Collecting premium
 - Forwarding aggregate amounts to employer/client



SERVICES

- ❑ Broker may provide administrative services to an insured under 2119 service agreement
- ❑ Broker may not sell non-insurance services or products in capacity of insurance broker as such
- ❑ Broker may not tie solicitation of non-insurance service or product to sale of insurance



SHARING COMMISSIONS

Licensed agent or broker may share commissions with another NY licensed agent or broker

Producer must be licensed for such insurance

Agent must be appointed by insurer

Must actually provide services, if insurance on municipality

REFERRAL FEES

2114-2115-2116

- 2114—life & a&h agents
 - (brokers)
- 2115—p/c agents
- 2116-brokers
- Prohibits insurer or agent paying compensation to unlicensed agent or broker
- Does not prohibit compensation by broker to unlicensed person (untrustworthiness)



REFERRAL FEES

2114-2115-2116

- Unlicensed person may make referral to licensed agent or broker
- No referrals to insurer
- Bill extended sunset to 9/10/09

Two conditions:

- No discussion of terms and conditions
- Compensation not payable based upon sale



Contacts

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Contacts

Send complaints to:

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