

Florida Insurance Regulation

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Given the central role the insurance industry plays in millions of American lives and businesses, it is no wonder that it is subject to a number of regulators – the federal government, state governments, and industry watchdogs. The primary purpose of this regulation is to promote the public welfare by maintaining the solvency of insurance companies. After all, policyholders depend on a company's financial stability to pay benefits well into the future. One insolvent company can jeopardize thousands of insureds. In addition to ensuring the financial strength of individual insurers, regulators also provide consumer protection, enforce fair trade practices and take care that insurance contracts are offered to the public at fair prices. It is very important that insurance agents be aware of and comply with all insurance laws and regulations.

Florida's Regulators

The **Department of Financial Services**, headed by Florida's Chief Financial Officer, and the Commissioner of the **Office of Insurance Regulation** oversee the insurance industry in accordance with the provisions of the Florida Insurance Code. They each have rule-making and enforcement powers to carry out their responsibilities.

The **Florida Insurance Code** is a broad set of regulatory principles. It sets general policy, but leaves the details of regulation to the Department and Office. The Florida Legislature adopted a Policyholder Bill of Rights to protect the insurance buying public. The Bill of Rights sets forth a series of aspirational goals to guide the Department and Office in their day-to-day operations.

Florida Policyholders' Bill of Rights Florida Statutes, Chapter 626.9641

(1) The principles expressed in the following statements shall serve as standards to be followed by the department, commission, and office in exercising their powers and duties, in exercising administrative discretion, in dispensing administrative interpretations of the law, and in adopting rules:

- (a) Policyholders shall have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies.
- (b) Policyholders shall have the right to obtain comprehensive coverage.
- (c) Policyholders shall have the right to insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy.
- (d) Policyholders shall have a right to an insurance company that is financially stable.
- (e) Policyholders shall have the right to be serviced by a competent, honest insurance agent or broker.
- (f) Policyholders shall have the right to a readable policy.
- (g) Policyholders shall have the right to an insurance company that provides an economic delivery of coverage and that tries to prevent losses.
- (h) Policyholders shall have the right to a balanced and positive regulation by the department, commission, and office.

(2) This section shall not be construed as creating a civil cause of action by any individual policyholder against any individual insurer.

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The Department of Financial Services focuses its regulations and authority on consumer and agent issues, such as agent licensing and anti-fraud efforts. The Office of Insurance Regulation concentrates on regulation of insurance companies and contract terms. The Department and the Office are empowered to investigate complaints, audit industry participants, and, if need be, rehabilitate insolvent insurers.

Let's take a quick look at a few regulations Florida imposes on insurance companies and agents.

Insurers

Certificates of Authority

An admitted insurance company is one that the Office of Insurance Regulation has licensed to transact business in Florida under the provisions of the state laws — i.e., it holds a certificate of authority to operate in Florida. Put another way it is an “authorized” company.

Insurance companies that have not been authorized by the Office do not come under the jurisdiction of the Florida Office of Insurance Regulation — they are not subject to examination of its financial soundness, approval of types of coverages offered, nor the appropriateness of its advertising. Florida's Insurance Guaranty Association (described below) only covers the liabilities of authorized insurers, so anyone purchasing policies from unauthorized companies is at risk if those insurers cannot meet their claims. In Florida, an agent is personally liable for any insurance contract he or she places with an unauthorized insurer.

Unauthorized Entities

The sale of insurance by unlicensed entities poses a grave danger to the public. These entities and contracts are not subject to the safeguards built into state insurance laws. "Policies" issued by unauthorized "insurers" are not required to maintain adequate reserves to pay policyholder claims. In many cases, operators of these "unauthorized entities" embezzle the premium payments -- and when claims begin to mount, the house of cards simply collapses. Moreover, since the "insurers" were unlicensed, their policies are not covered by the state guarantee fund. So policyholders are left holding the bag -- liable for expenses they thought would be reimbursed. This usually ruins their personal credit and has profound impacts on other aspects of their lives. In the case of phony health insurance, coverage by "unauthorized entities" means that duped policyholders do not have "continuous credible coverage" -- a typical requirement for obtaining new group coverage. Even if "policyholders" don't suffer financial ruin due to unpaid claims, they may find it difficult or impossible to obtain new coverage once the scam is discovered.

The sale of phony insurance usually occurs when the insurance market is tight. When legitimate insurance is difficult to obtain, the insurance-buying public is susceptible to dishonest operators marketing coverage offered by unauthorized entities. In many cases, the promoters of these plans operate in the shadows of the regulatory structure. The patchwork, federal/state

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nature of insurance regulations works to their advantage: by claiming federal jurisdiction, they avoid state regulation -- and by claiming to be insurance products (which are primarily regulated by state law), they avoid federal oversight.

During their investigations of unlicensed entities, department regulators have found that the operators of unauthorized entities would not have been able to reach potential buyers without the assistance of licensed agents. Both the insurance buying public and agents have been enticed by the low premiums unlicensed entities charge, but the rates are often not actuarially sound and money is not set aside for reserves. The Department usually becomes aware of a plan's termination when policyholders began complaining about slow or no payment of claims -- but by that time, there is little the Department can do to protect the "policyholders".

Effective October 1, 2002, Florida-licensed insurance agents who sell unlicensed insurance could face a felony charge and lose their agent's license. To make agents aware of the problems of caused by authorized insurers, the new law requires a discussion of unauthorized entities in all insurance education courses.

Florida's Unauthorized Entities Law enhanced the penalty for selling unauthorized insurance from a second-degree misdemeanor to a third-degree felony, punishable by up to five years in prison and a \$5,000 fine per count. In addition, Florida law requires anyone who solicits, negotiates or sells an insurance contract for an unauthorized insurer to be held financially responsible for unpaid claims.

The Department offers a reward of up to \$25,000 for information leading to a conviction. The Department's Bureau of Agent and Agency Investigations has 60 investigators available to look into potential violations and take appropriate administrative action against an agent's license. The Division of Insurance Fraud has more than 100 sworn law-enforcement investigators who can file criminal charges. Further, the department has created an Unauthorized Entities Section dedicated to tracking and taking civil action against these phony plans.

To summarize, possible consequences for **acting as an insurer without a proper license**:

- ◆ conviction of third-degree felony
- ◆ liability for all unpaid claims
- ◆ suspension or revocation of all insurance licenses

Consequences for **aiding and abetting an unauthorized insurer**:

- ◆ conviction of third-degree felony
- ◆ liability for all unpaid claims
- ◆ suspension or revocation of all insurance licenses

Solvency

Insurance policies are only of value if there is a high probability that the company will be able to fulfill its promises into the future. One reason for state regulation of insurers is to ensure the financial integrity of insurance companies operating in the state. Insurance regulators require companies to file annual reports, and will audit insurers' financial situation at least every three years.

Occasionally, a property or casualty insurance company will fail. When this happens, state regulators will appoint a receiver to liquidate or reorganize the insurer in a process similar to bankruptcy. If liquidated, the **Florida Insurance Guaranty Association** – an organization comprised of all authorized property and casualty insurers in Florida – takes over the duties of the failed insurer: collecting premiums, servicing the policy and paying claims. Through this association, the industry collectively “bails out” the occasional failed firm. For most claims, the Association will pay unpaid property and casualty claims up to a maximum of \$300,000 (or the policy limits, if less) – with two exceptions. Claims under homeowner coverage are capped at \$500,000 (structure and contents) or the policy limits. For claims by condominium or homeowner associations, the limit is the lesser of the policy limits or \$100,000 multiplied by the number of units in the association. All claims processed by the Florida Insurance Guaranty Association are subject to a \$100 deductible. Florida law prohibits agents from referring to the Guaranty Association as part of their sales presentations. (A similar mechanism, the Florida Life and Health Guaranty Association, applies to unpaid claims of failed life and health insurers.)

It is important to remember that these protections are available only to claims against policies issued by Florida-authorized insurers.

Policy Form and Rate Approval

With the exception of life insurance, the Office of Insurance Regulation reviews the premium rates of all insurance policies issued in Florida. Florida law provides that the benefits offered by an insurance policy must be reasonable for the premium charged. The Office of Insurance Regulation has established various criteria that insurance companies must meet before rates can be approved. These are based on acceptable loss ratios and expense ratios that are designed to prevent the insured from being overcharged by the insurance company. Premium rate schedules for property and casualty policies must be filed with – and approved by – the Office. The rate schedule will include the premium for the basic policy as it applies to different actuarial classes, as well as premium costs for riders and other optional coverages the insured may choose. The rate schedule will also outline any discounts or other premium reductions that various policyholders may qualify for.

Agent Responsibilities

Any individual who solicits insurance products must hold a valid license issued by the Department of Financial Services for that line of business. A licensed individual also must be appointed as an agent to represent an insurance or annuity company before he or she may “transact insurance”. In short, an agent must simultaneously hold a license from the state and an appointment from an insurance company to solicit or transact a line of insurance. One is not effective without the other.

In Florida, an agent's license does not have an expiration or renewal date – it may remain in force perpetually. (Of course, the Department may suspend or revoke an agent's license for violations of the Insurance Code or Department rules.) If a licensee loses an appointment for any line of business, his or her license will remain valid for 48 months. However, the licensee may not engage in insurance activity for that line of business until a new appointment is obtained. If the agent remains unappointed for 48 months, the license lapses. Appointments are valid for two years, and must be renewed by the appointing company to stay valid.

Brokers vs. Agents

Agents represent the insurers that appoint them. Brokers legally represent the insurance purchaser (or prospective purchasers). A broker solicits and accepts applications for insurance and then places the coverage with an insurer. The business is not in force and the insurance company is not bound until it accepts the application. In practice, the regulatory distinction between brokers and agents is not significant, as Florida does not issue separate licenses for brokers. Instead, Florida-licensed agents may act as brokers for their clients. There is, however, a legal distinction between agents and brokers regarding their fiduciary responsibilities, and that is explored in greater detail in the next chapter.

Ongoing agent requirements

Florida law requires an agent to notify the Department of Financial Services in writing, within 60 days, of any changes to his or her name, residence address, business street address, mailing address, phone numbers or email address. Change of name/address forms are available on the Department website. (www.fldfs.com) The email address requirement was added in 2008. In the future, the Department will send all notices to agents via email, so it is important that agents update their contact information with the Department.

Under Florida law any agent who has been found guilty (or plead guilty or *no lo contendere* ("no contest")) to any felony or a crime punishable by imprisonment of 1 year or more must notify the Department in writing within 30 days.

Continuing education

To maintain a resident's insurance agent license in Florida, the agent must complete continuing education every two years in courses approved by the Department. Agents licensed less than six years must complete at least 24 credits in courses rated basic, intermediate or advanced. Those who have been licensed for more than six years must complete only 20 credits every two years, but these credits must be in intermediate or advanced level courses. The rules provide additional re-

ductions for persons with certain professional designations (CLUs, CPCUs, etc.) with 25 years experience. Customer service representatives must complete 10 credits of continuing education every two years.

Each agent or customer representative must complete, as part of his or her required number of continuing education credits every two years, a minimum of three credits of continuing education on the subject of ethics approved by the Department. (Life-licensed agents must also complete three credits on the subject of "senior suitability" — the senior suitability credits can also be used to meet the ethics requirement.) In addition to the ethics requirement, property and casualty agents must also complete at least one credit of continuing education on the subject of hurricane premium discounts/mitigation options. This course satisfies both the ethics and hurricane mitigation requirements.

Obviously, general lines agents and customer service representatives must complete CE courses dealing with property and casualty topics. General lines agents who also hold a life and/or health license must split their continuing education so that they complete approximately half of their credits in property/casualty courses and the other half in life/health courses. A detailed breakdown of exact requirements can be found on the Department's website: www.fldfs.com.

Agents will not be able to renew their appointments, reinstate old ones or obtain new ones, if they are out of compliance with the continuing education requirements.

Agent Appointments

A licensee may not transact insurance until he or she is appointed by an authorized insurer for the class of licensure held. For example, if an individual holds both a general lines (2-20) and a health agent (2-40) license and wishes to market all both types of products, he or she must be appointed by either an insurance company authorize by the Office to transact both lines of business or by separate companies for each line.

If a licensee loses an appointment for any line of business, his or her license will remain valid for 48 months. However, the licensee may not engage in insurance activity for that line of business until a new appointment is obtained. If the agent remains unappointed for 48 months, the license lapses. Appointments need to be renewed every two years. If the agent fails to comply with continuing education requirements, the Department will not allow renewal.

Premium payments

Under the law of agency, an appointed agent is the lawful representative of the principal, which in this case is the insurance company. Payment of premiums or other sums to the agent is the same as paying them to the insurance company. Because of this, the agent has a fiduciary responsibility to turn the funds over to the insurance company immediately, and not to use them for his or her own purposes. If held by the agent, these funds should be held in a segregated account, i.e., separate from personal funds. Converting those funds to personal use is a crime known as embezzlement or conversion. Florida law requires agents to keep records for at least three years if the transaction pertains to premium payments.

Commissions

Generally speaking, agents will show proposals for companies that have appointed the agent. Agents may, however, show proposals for other companies – provided the agent is licensed and appointed (by at least one insurer) for that particular line of insurance. The agent may furnish materials and show proposals for any company authorized to sell that line in Florida. However, if the agent actually writes the business, the company must formally appoint the agent when the agent submits the application. Furthermore, the company may not pay the agent a commission until the appointment is actually issued.

Agents may split their commissions with another agent who is Florida-licensed and appointed for that line of insurance. Splitting of commissions with non-licensed persons is considered “rebating”, which is permitted only under tightly regulated circumstances.

For example, John Williams holds a general lines and life insurance license and is an appointed general lines and life agent. While he feels comfortable discussing traditional life insurance as well as property and casualty insurance with his clients, when it comes to variable annuities he refers his clients to Maria Perez, a licensed life and variable annuity agent. Maria cannot pay John a referral fee or split the commissions on variable annuity products with John, since he does not hold a variable annuity license. (She could, however, split a commission on a fixed annuity, life insurance or property & casualty business with John, as he is licensed and appointed for those lines.)

Prohibited Activities

Replacement, Twisting & Churning

Replacement is defined as changes in existing coverage, usually with coverage from one insurer being "replaced" with coverage from another. Because a commission is payable when an existing policy is replaced with another, replacement can lead to ethical lapses. Agents should be aware that replacement of coverage can, in some cases, be inappropriate and therefore unethical. That said, it can also be argued that *failure to replace* coverage that no longer meets the client's current needs may be just as unethical. Because of the problems arising from unethical sales practices, state law imposes restrictions and additional duties on agents who seek to replace coverage.

In Florida, replacement is defined as a purchase of new coverage accompanied by a substantial reduction in the benefits available under an existing policy. Agents should ask about existing coverage and note possible replacements on the application. This is a minimal standard of conduct. To be ethical, the agent must also provide a complete and accurate disclosure of the proposed replacement. To do less, would be unethical. A complete comparison requires that the consequences of any replacement be made clear to the policyholder.

For example, a homeowner currently has windstorm coverage from Company A. As a result of a certified home inspection a number of years ago, the homeowner qualifies for reduced premiums with Company A. The agent proposes changing the coverage to Company B, a more financially sound company, for approximately the same premium cost. At first glance, this appears to be a reasonable recommendation. But the agent should also disclose that the homeowner's property will probably have to be re-inspected, at an additional out-of-pocket cost, to qualify for the discounted premium rate from the new insurer. There is also the possibility that Company B's premium discounts may not materialize if the re-inspection finds new vulnerabilities in the property.

Twisting is the act of replacing insurance coverage of one insurer with that of another based on misrepresentations. (Another activity, **churning** is, in effect, "twisting" of policies by an existing insurer.) While replacement of existing coverage is a perfectly legitimate practice, inducing changes in coverage based on misrepresentation or deception is unethical and illegal.

Sliding

Premiums paid by clients must reflect the cost of the underlying insurance policy that they have purchased. It is illegal for agents to charge clients more (or less) than the premium rate filed with the Office of Insurance Regulation. Adding fees for ancillary services or coverages that are not disclosed to the policyholder is a violation of Florida law known as "sliding". For example, an agent when presenting automobile insurance might also offer clients membership in an auto club or prepaid legal services. It is acceptable to do so, but any costs or fees for the "add-ons" must be disclosed and kept separate from the auto insurance coverage. Otherwise, the agent is guilty of "sliding".

Rebating & Gifts

While giving gifts to customers is customary in many industries, this practice can lead to ethical problems. For this reason, gift-giving or rebating is generally forbidden in the insurance business. Rebating involves the giving or promising of a valuable consideration intended to be an inducement to the buyer to purchase an insurance policy. The inducement may be cash or any other item of value. Generally, any gift greater than a nominal one could be considered a valuable consideration and a possible violation of rebating rules.

In Florida, any rebates must be uniformly offered to all prospects in the same actuarial class -- that is to say, the agent may not "pick and choose" which clients will be offered the rebates. If offered, the size of the rebate must also be uniform among those receiving the rebate -- again, no "picking and choosing", although the rebate schedule may allow for differences between policies of different sizes or members of different actuarial classes, so long as factors such as race, age, sex, marital status, residence, or occupation are not used to distinguish the classes. Nor may agents require clients to purchase other ("collateral") products in order to obtain the rebate. Agents who choose to rebate must prominently display their rebating schedules at their place of business and make copies of the schedule available to members of the public. Such schedules must be retained for five years.

Agents must file a copy of the rebating schedule with the carrier prior to offering rebates on policies issued by that carrier. All rebates given to customers must be consistent with the schedule that is filed with the insurer. Insurers may deny agent permission to offer rebates -- and most do. If an insurer prohibits rebating on policies it underwrites, the agent may not rebate any portion of his or her commission earned from that company.

Gifts of nominal value are permitted under Florida law, with some restrictions. Agents and companies may, for advertising purposes, provide applicants with gifts valued up to \$25. Rules of the Department of Financial Services define gifts as "*articles of merchandise*". The Department does not recognize gift certificates, memberships or other services as "merchandise". Consequently, agents who give away auto club memberships, gift cards or cash violate the Insurance Code.