

500 Agents, Brokers, Solicitors, and Consultants

502 Insurance Consultants [Formerly Regulation 15]

1.0 Authority

- 1.1 In accordance with the authority granted by 18 **Del.C.** §1737, the Insurance Commissioner of the State of Delaware does hereby make and promulgate the following rules and procedures applicable to insurance consultants as established by 18 **Del.C.** §1705. These regulations shall apply to all insurance consultants doing business in this State and who undertake to consult with clients for a fee on insurance matters pertaining to real or personal property located in this State. The rules and procedures herein described shall become effective May 7, 1975.

2.0 Prohibition

- 2.1 Effective May 7, 1975, no person, firm or corporation shall, for a fee or other valuable consideration, hold himself or itself out to the public as being engaged in the business of offering advice, counsel, opinion or service with respect to the benefits, advantages, or disadvantages to be obtained under any contract of insurance that is to be purchased, or is being considered for purchase, unless such person, firm or corporation has been duly licensed by this department as a consultant, an agent or broker.
- 2.2 No insurance consultant, agent or broker licensed by this department shall, for a fee or other valuable consideration, consult with or for a client until a written agreement has been prepared and signed by both parties as required by 18 **Del.C.** §1705(e).
- 2.2.1 Agreements shall include, but not be limited to date, client's name, address, a brief, general statement of the work to be undertaken, the fee agreed upon and signature of both parties.
- 2.2.2 Records of the consultant and of the agent's or broker's transactions as a consultant shall be maintained at the principal business address of the licensee for a period of not less than 3 years and shall be made available to the commissioner on request.

2.3 Fees

- 2.3.1 Consultant: No consultant may, in this State, accept commissions or any valuable consideration, by whatever name called, from any insurer, insurance agent or insurance broker when such fee proceeds from or which may be attributed to the sale of insurance.
- 2.3.2 Agent or broker: No insurance agent or insurance broker may, in this State, accept commissions or any valuable consideration by whatever name called, from any insurer, insurance agent, or insurance broker when such fee proceeds from or which may be attributed to the sale of insurance contracts for which, or related to which, the agent has previously received a consultant's fee. This prohibition specifically includes so called "override" commissions paid to management based on the production of agents under their supervision or direction. In instances where the manager/supervisor has received a consultant's fee and, subsequently, an agent under his supervision places the insurance, the entire commission, to include the customary "override," shall pass to the Producer of Record, the writing agent.
- 2.3.3 Waiver of fee: Consultation agreements may be written by the agent or broker to reflect a stated consultation fee which will be waived on the condition the client actually purchases the subject insurance from or through the agent or broker serving as consultants.

3.0 Penalties

- 3.1 Violations of this regulation which have been verified by hearing or otherwise acknowledged, shall subject the offending consultant, agent or broker to the penalties authorized by 18 **Del.C.** §§1732, 1733, and as determined by the Commissioner.

4.0 Consultant's Duties

TITLE 18 INSURANCE
DELAWARE ADMINISTRATIVE CODE

2

- 4.1 In accordance with 18 **Del.C.** §§1705 and 1717, a consultant and an agent or broker serving in the capacity of a consultant shall be bound to serve with complete objectivity and with sole loyalty to the client and shall, to the best of his ability, provide the client with such advice, counsel, opinion or service, which in his best judgment, meets with the needs and interests of the client.

5.0 Qualifications for a Consultant's Certificate of Authority

5.1 Type license

- 5.1.1 Consultant's license shall be issued for the lines of life, general lines, or a combination of the two types.

A life consultant's authority shall include life, health, credit life, credit health, and variable annuity authority as defined 18 **Del.C.** §1715(a)(1), (2), (3).

- 5.1.2 A general lines consultant's authority shall include all lines of insurance except life, variable annuity and title as defined in 18 **Del.C.** §1715.

- 5.1.3 The combination life and general lines consultant's authority shall include all lines of insurance except title.

5.2 Qualifications for a Delaware consultant's license

5.2.1 The applicant shall:

- 5.2.1.1 Meet the general licensing requirements as stated 18 **Del.C.** §§1720 and 1721.

- 5.2.1.2 Have been licensed as an insurance broker for the lines applied for at least two years or shall furnish evidence of special training and experience which is acceptable to the Commissioner in lieu of this requirement.

- 5.2.1.3 Be required to surrender any current insurance Certificate of Authority issued by this Department.

- 5.2.1.4 If non-resident, provide a Certificate of Qualification as a consultant from the Insurance Department of the applicant's State of Residence.

- 5.2.1.5 Provide a letter from an insurer or broker licensed in this State, attesting to the applicant's ability to serve as a consultant for the lines requested.

- 5.2.1.6 Complete an application on forms provided by the Commissioner (Application form 2A, 213 with fee of \$50.00 per license).

- 5.2.1.7 At the Commissioner's discretion, sit for an examination conducted by the Qualification Review Board.

- 5.2.1.8 Applicants for consultant's license who present evidence of membership in the American College of Life Underwriters, the American College of Property and Liability Underwriters, the Society of Actuaries, the Casualty Actuarial Society, the American Academy of Actuaries or any similar organization which administers professional examinations shall be exempt from examination and/or prior license qualifications.

6.0 Exemptions

- 6.1 An actuary or a certified public accountant who provides information recommendations, advice or services in his professional capacity, if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from such information, recommendation, advice or services, shall not be required to obtain a Certificate of Authority as an insurance consultant.

7.0 Insurer's Responsibility

- 7.1 Each insurer transacting business in this State shall communicate the requirements of this regulation to their personnel doing business in Delaware and to take such action as is required to insure such persons are in compliance.