

Virginia

Regulatory Hot Tip 2013 – 3

Professional Insurance Agents Association of Virginia and DC, Inc.

What happens to your Agency when you lose your insurance agent's license?

During the 2013 Virginia General Assembly session, your Association worked with representatives of the Bureau of Insurance ("BoI") to rewrite a portion of a bill sponsored by the BoI clarifying the authority of the BoI to keep "bad actors" out of the insurance business.

In spite of what you may have heard, no one, and certainly not the PIA, has any interest in having felons own an insurance agency. However, although the BoI stated that they intended for this bill merely to make existing law more consistent with insurance practices in Virginia, your Association felt that the BoI's proposed language went further than necessary to accomplish its goal of keeping bad players out of the business. Hence, your PIA sought to make the bill "better."

The unspoken truth is that owners of insurance agencies in Virginia do **not** have to be licensed insurance agents. Every licensed insurance agency must have a licensed insurance agent doing all of the things that agents do for customers, but that individual doesn't have to be an agency owner.

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In its first draft, the BoI's bill sought to give it power to force licensed insurance agency owners to dispose of their business if their individual insurance licenses were revoked by the Commission or voluntarily surrendered in lieu of a hearing before the Commission. Everyone agrees that bad players should not be in the insurance business, but the BoI already has a mechanism to deal with bad players: namely its investigative powers and its authority to bring any Virginia licensed agent before the Commission whenever that agent is suspected of violating the insurance laws. Additionally, if the allegations involve problems with trust account money, the BoI can go further and solicit the aid of the local Commonwealth Attorney's office to bring criminal actions against the agent/agency, as appropriate, for misuse of agency funds. With such far-reaching powers, your Association felt that no further statutory powers were necessary.

Also, had this proposed statute passed *as originally proposed*, your Association felt that it would have led to a number of unintended consequences. I understand that many examples of unintended consequences were offered during the General Assembly Session. However, since I was not present for those discussions, I *will not* attempt to recite all of those in this hot tip.

Instead consider the scenario, which could have been a valid discussion point at the General Assembly, had someone thought to raise it. Specifically, a Virginia insurance agency is owned by three shareholders who are all validly licensed insurance agents. Unfortunately one of these insurance agents, let's call him Agent C, either voluntarily surrenders his license to the BoI in lieu of a hearing as part of a settlement or has his license revoked by the Commission. *If the proposed statute had passed as written*, Agent C would not only lose his Virginia agent's license but he would be required to immediately divest himself of his interest in the insurance agency. Unfortunately Agent C might discover that the economic climate was not an opportune one for getting the best value for his agency interest, particularly through a forced sale. Moreover, if he tried to sell his interest to his business associates, they might not be willing or indeed even have the cash to pay him the value he believes his agency interest is worth.

As we know, timing is everything in life and that is also true in business! Thus in this situation, because of the timing of the loss of Agent C's insurance agent's license, he could find himself receiving the lowest price available in the market rather than waiting until market conditions changed and thus a higher value. Your Association felt that the potential for such inequity was not right given the fact that the current law permits non-licensed individuals to own insurance agencies. Unfortunately, this is one

of those factually driven situations we learn about in law school that holds that difficult facts make bad law.

To clarify, in the situation stated above concerning Agent C, *under the law as it was passed*, the agent would lose his Virginia license for failing to maintain his home state license, but he could continue with his part ownership in the agency. Agent C would have to let his colleagues, who are in this scenario are properly licensed insurance agents, operate the insurance agency business until such time as he could lawfully get his license reinstated or he could sell his interest at a fair price.

Of course the BoI explains that it intended to determine when folks would have their licenses taken on a case-by-case situation using sound wisdom and judgment. No one doubts the current integrity of the BoI, but concerns were raised about the potential inequity should the new law have been enacted.

Likewise I understand that several insurance agents were concerned about ESOPs and the consequence of being required to undertake a forced sale of their agency because the owner voluntarily loses his insurance agent's license from either voluntary surrender or revocation, particularly at a time when the employees might be buying the company. Such action could potentially blow up the ESOP purchase.

Therefore, after much discussion between the participating interests, a compromise was reached at the General Assembly level such that Virginia- licensed insurance agents who voluntarily surrender their licenses in lieu of hearing or have their licenses revoked by the Commission can not "own and operate" an agency. This compromise language, thus removed the potential for such an agent to have to immediately hold a fire sale in this current economy because one lost their Virginia insurance agent's license. Rather, the agency owner and former licensed insurance agent can continue to own the agency but must hire another individual, who is a validly licensed insurance agent to operate the agency.

For your full entertainment I have included the relevant paragraph found in § 38.2-1822 *which was the subject of this debate*. This following is the law that was passed in the 2013 session and will be implemented on July 1, 2013. You can read the revisions in italics.

B. No individual shall act as an agent on behalf of a business entity in the transaction of insurance unless he is licensed as an agent and appointed, if appointment is required by statute. *No individual whose license has been revoked by the Commission, or voluntarily surrendered in lieu of a hearing before the Commission, shall directly or indirectly*

own and operate, control, or be employed in any manner by an insurance agent or agency during the time period in which the individual is unlicensed unless otherwise authorized by the Commission.

For those of you that like to perform comparisons, below is the language as it exists today (before the revisions to § 38.2-1822 are implemented on July 1, 2013).

B. No individual shall act as an agent on behalf of a business entity in the transaction of insurance unless he is licensed as an agent and appointed, if appointment is required by statute.

So the next time you question your PIA dollars at work, think about what might have happened to you had the PIA not worked with the BoI to form a compromise that accomplished the goals of each.