

Virginia

Regulatory Hot Tip 2013 – 1

Professional Insurance Agents Association of Virginia and DC, Inc.

WHAT IT MEANS TO BE REGULATED

Ask anyone who has recently moved from being unregulated to being a regulated entity and they will all say the same thing: it increases overhead expenses, slows down normal business processes and really just adds an unnecessary layer of review. In other words, if you don't have to be regulated, don't go seeking it out. Indeed, to the new entrant, the costs and time associated with regulation can often seem to engulf the business.

Of course, as an insurance agent and agency, you have very little choice in the matter as you have been raised in a regulated environment and you are a regulated entity. Your regulatory scheme has multiple masters. First, on the local level, some of you may have to have a business license, particularly if you have an insurance consulting license. But, depending on where your business is physically located, others may find that you do not. Second, on a state level, if your agency is a corporation or limited liability company, you have to be incorporated or organized by

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filing papers and paying the appropriate fees with the Clerk's office of the Virginia State Corporation Commission ("Commission"). Ongoing, you will be assessed an annual fee to remain in good standing with the Commission, and also have to file updated annual reports related to your officers and directors if you are a corporation. Additionally, once licensed you have ongoing continuing education requirements and associated costs.

Additionally, you have to secure a license from the Bureau of Insurance of the Virginia State Corporation Commission. Again, this process entails, among other things, an application, a fee and a criminal background check. Annually, the insurance agent's appointment must be renewed (the P&C and L&H licenses, issued by the state, remain in existence so long as the agent/agency remains in good standing). This is generally paid by the insurer, but it is a cost of being regulated. Additionally, if you hold a surplus lines insurance agent's license or an insurance consultant's license you have to renew these licenses annually. Moreover, if you operate under a "nickname" or trade name, you have to file locally in the proper local court, with the Clerk's office of the Virginia State Corporation Commission and also with the Bureau of Insurance. The locality and the clerk's office both have filing fees associated with the filings. Though housed in the same building, the Clerk's office and the Bureau of Insurance, both found under the umbrella of the State Corporation Commission, have separate and different requirements for new insurance agency businesses. In fact as an insurance agent, you are subject to dual regulation under the State Corporation Commission.

On the both federal and state level you also have to respond to the requirements of the employment law of each. Certain kinds of insurance are subject to state and federal oversight, flood comes to mind on the property and casualty side of the house, whereas Medicare/Medicaid

quickly comes to mind on the health side of the house. Additionally, we are all still ferreting out the federal and state requirements under the new *ObamaCare* health care system.

On a state level, insurance is regulated by the same agency that regulates big electric companies, big natural gas companies and financial institutions. That means that your regulator has lots of experience dealing with large well capitalized entities. It also means that the cost of having applications or matters proceed through the Regulatory labyrinth becomes more complicated and expensive with time. Hearings before the State Corporation Commission have become more complicated over time and with more sophisticated companies appearing before the Commission. In my opinion, with this sophistication, the bar is raised for the little guy who must be able to present his/her case with the same sophistication as the big boys or risk looking like “Elmer Fudd.”

This impact is similar to accounts in the newspaper whereby normal Joe citizen doesn't understand why each crime is not approached with the same sophistication level as we see on the NCIS TV shows. But, how many local police departments not situated in large metropolitan areas have the financial resources to be able to use those fabulous machines and techniques for solving a crime? Not many.

The other important fact about being a regulated entity is that you are always under the scrutiny of the regulator's review. Indeed, as we know, the Bureau of Insurance can come into your office as often as they like during regular business hours and ask all kinds of questions of you about your business. They even have the right to make you show them your books and records. Failure to comply with their requests could cause you to face sanctions, including loss of your license. Know that you are not alone, however, as all regulated entities face the same scrutiny and are subject to the same review; the difference, of course, as it relates to the Virginia

State Corporation Commission, is that entities regulated by this body come in different sizes, shapes and financial status.