

Virginia

Regulatory Hot Tip 2010 –Five

Professional Insurance Agents Association of Virginia and DC, Inc.

WHEN THE GOVERNMENT REGULATOR COMES TO VISIT

Everyone knows or can easily imagine the initial sense of panic that follows the arrival of a state or federal government official into your business. In our law practice, we frequently are asked to assist businesses on the receiving end of such visits, and in our experience, panic is not an emotion that is likely to be of much use. This Hot Tip is intended to help you be prepared for such an event, and, hopefully, keep the panic down. Each agency has its own rules and procedures pertaining to an investigation or inquiry into your business and this Hot Tip is not intended to go through each issue related to a potential regulatory visit, but instead guide you with general tips and suggestions on how to prepare for and navigate such a visit.

1. Maintain your business records in an orderly and up-to-date fashion.

The best preparation for a visit from the regulator is to follow the motto: Be prepared! Recognizing that we are all occupied during these stressful economic times with survival and sales, try to maintain your business records in an accurate and up-to-date fashion. Remember, in the Commonwealth of Virginia, the law states that insurance licensees must keep all records related to insurance transactions for the three previous calendar years. Insurance business records are required to be kept in a manner that would allow prompt inspection by the Virginia State Corporation Commission (the “Commission”) on its request.¹ Your accountant or other financial advisor may advise you as to a longer retention timeline for record maintenance while

¹ Va. Code Ann. § 38.2-1809(B).

This regulatory hot tip is designed to provide accurate and authoritative information about the subject matter covered as of the date of this hot tip. The statutory authority and substantive information contained in this hot tip should be verified as it is subject to change with the passage of time. This hot tip is provided with the understanding that the author is not engaged in rendering legal, accounting or other professional advice or counsel. If legal advice or other expert assistance is required, the services of a competent professional should be secured. This publication is coauthored by Bridget L. Welborn, JD and Bruce B. Nolte, JD, CIC, CPCU who practice at The Nolte Law Firm, P.C., 1427 W. Main Street, Richmond, VA 23220. NolteLaw offers Solutions for Business—Large and Small and can be reached at: (804) 658-4518. The firm’s practice is concentrated in matters of a general business nature as well as regulated industries and regulatory compliance (telecommunications, insurance, financial, water & sewer, energy-related matters, and government relations). Bridget, who is licensed in North Carolina and Virginia, joined The Nolte Law Firm, P.C. in 2010. She has legal experience in both regulatory and business areas but she also brings to the firm her intellectual property experience. Bruce has over 30 years of experience in the financial services industry, most recently serving as CEO of a Richmond-based bank holding company.

keeping tax liabilities and other consequences in mind. Knowing that your business records are in order will help keep the panic level down and allow you to focus on what is happening during the regulator's visit.

2. Consider having your legal or financial representative present.

Whether the visit to your office is unannounced or scheduled, we strongly recommend having an impartial third party present. That third party could be your attorney, your accountant and/or your payroll company depending upon whether the visit is from the Internal Revenue Service, the City/County Payroll Tax office, Department of Labor, the Bureau of Insurance or some other regulator. Impartial third parties will not only make you feel more comfortable with the situation but may also be able to answer questions you cannot answer or assist you in understanding more clearly what information is being sought. They will also come prepared to take careful notes on your behalf. Keep in mind, the sooner you bring your attorney into the situation the sooner the attorney will be able to help you.

3. Does the government have to right to be at your office, and if so, pay attention to the questions asked and make copies of relevant documents.

Always remember to be courteous to the regulators. But remember, you have the right to question upon what authority the regulators are in your offices. Before a government agent or employee can just enter your office and request inspection of your records, they must be granted such authority by law or by your permission. For example, in Virginia, the Commission has the right to examine and investigate any person engaging or alleged to be engaged in the business of insurance within Virginia. Furthermore, as a licensee in Virginia, your license could be suspended or even revoked if you refuse to comply with the requests of the Commission or employees of the Bureau of Insurance.² So when the regulator comes, it is okay to ask him or her what is the authority given for the visit. It is prudent for you to take notes and remember *exactly* what questions were asked and *exactly* what documents, if any, were copied and taken from your office. Again, if you ask that the regulator wait until you are able to have your attorney present, your attorney will be able to perform this critical function for you. Should the visit progress into a formal investigation or hearing, having an accurate record of what the Bureau of Insurance is reviewing is imperative. You and your attorney can more accurately and efficiently prepare your case when you are prepared on the front end. Keep in mind the more leg work you put in up front, the more money you could potentially save in legal fees during a formal investigation and hearing.

4. Remain Calm.

² Va. Code Ann. § 38.2-1809(A),

And finally, don't panic. Having the IRS, Bureau of Insurance or another regulating entity at your place of business can be a stressful event. Take a deep breath, remain calm and above all, be professional.

We realize that not all visits are followed by investigations and not all investigations end in penalties or reprimand. In an ideal situation, the regulator may congratulate you on your business records and procedures. It does happen! Honest!