

Virginia

Regulatory Hot Tip 2016 – 11

Professional Insurance Agents Association of Virginia and DC, Inc.

CAN I REALLY LEGALLY PAY A REFERRAL FEE TO SOMEONE WHO IS NOT A LICENSED INSURANCE AGENT?

Since I was a young attorney first starting out my career, the mantra I have always learned is, “you can only pay to or share insurance commissions with folks who are licensed insurance agents. And then only when you are both licensed for the type and kind of insurance involved.” I thought I understood this statement. Everyone who receives or shares commissions should be a licensed insurance agent. That is still the rule today.

But even back then, I learned that there were marketing instances when it was o.k. to give non-licensed people payments. The first instance in which this is true is when the agent pays a “referral fee” for individual insurance leads. But to be lawful, the agent must follow the rules. The second instance involves an agent purchasing, for a lump sum, a list of referral leads. In the second instance, the agent is paying a flat fee for the list, not a fee for each name on the list. Both situations have become acceptable, usual and customary practices in insurance when the agent follows the rules.

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Of course, as so often is true in the world, initially the rules were not really written down and were implemented through administrative policy. If you stayed within the lines (whatever those lines were) you could receive some money for passing on leads to insurance agents. I remember speaking with a very patient regulator about this very issue. I was of course trying to find the bright line that could not be crossed in this scenario. The regulator, knowing that I probably liked to shop, gave me the following example: If you go to the mall and upon your arrival you see a table manned by Mr. or Ms. Insurance Agent offering a trip to the Bahamas to the lucky person who put their name in a fishbowl and had it drawn out was following the rules so long as the price of the trip was discounted to something that cost less than \$25.00 and everyone was eligible to be in the drawing, regardless of whether you ever purchased insurance from Mr. or Ms. Insurance Agent. Moreover, if the same individual returned every day during the week when Mr. or Ms. X Insurance Agent was sitting at the table, they could put their name into the fishbowl multiple times, increasing their chances of winning. But, in those days, if you looked into the law you would not have found this rule or example. It just developed.

Along came the most recent overall update of the insurance laws of Virginia, which Virginia initiative flowed from a federal initiative at the culmination of the 20th century into the beginning of the 21st century known to all as Graham-Leach-Bliley; which in turn ultimately trickled down causing the insurance laws in the Commonwealth of Virginia to change, to include, causing the referral rules to become clearer.

If you review VA Code § 38.2-1821.1 B 8 which became effective in 2001, you will learn that one doesn't need to obtain an insurance license when one refers a customer to an insurance agent and receives compensation for the referral if one follows certain rules. The referral discussions cannot include a discussion of specific insurance policy terms and conditions, the compensation for the referral is a one-time nominal fee of a fixed dollar amount for each referral, and lastly, the compensation does not depend on whether the referral results in the purchase of insurance by the customer. Bingo, at least the little mall example that I had grown to understand was finally in the law. We also learn from publications by our regulators that it considers any compensation in the form of \$25.00 or less to be nominal.

So let's look at some questions and see how you do with your answers. *First, can I, as an agent, pay a fee every year to folks who send me names?* Well, it depends, don't you love it when lawyers say that?

To answer this question, the agent must be clear on what he or she is purchasing and how they anticipate making payment. First, the agent must determine whether he or she purchasing a single list (with prospect names on the list) for a lump sum, or whether the agent is purchasing individual names and paying the seller based on the cost of the individual names. Thus, if the agent is purchasing a referral list and paying a lump sum amount (for example \$100.00 for the list), you may be just fine to purchase that list year after year, regardless of whose individual name appears on the list. You are not purchasing individual names, but the list.

Second, *can an agent pay a car dealer for each new car buyer's name the car dealer sends to the agent?* The answer is yes so long as the payment is \$25.00 or less per name.

Third, *can an agent pay a referral fee to an association for each member name that the association sends to the agent?* You can if you follow the rules set forth above. Recall that in this case you are paying the association a fee for each member's name that the association sends to the agent. For example let's assume that you are working with an association whose members are all sailors. You want to purchase individual member's name in order to solicit them for a boating policy.

In year one, you pay the association a referral fee *for each member's name that they send to you*. In year two, you pay the association for each member, but less the names that were given to you in year one. In year two you can only pay for the new member's names. You are not permitted to pay for the names you already paid for in year one. So, a literal reading of the statute says "yes" you may pay a new referral fee (one time) for the individual names provided by a list for year one but then only for those new names added to the list in year two. You can't pay the association for individual member's names a second year when you have already paid the nominal fee for the name in year one. The payment for individual names is a one-time event. But consider the next alternative scenario.

Alternatively, can the agent purchase a list of names for a lump sum amount from the association?

Yes, you may pay a lump sum list fee to the association annually for its membership list. But, in this scenario you are not paying for the individual members names.

There are probably many more scenarios that come to your mind as you are sitting in your desk, but the purpose of this Hot Tip is to let you know that there are times where you can pay unlicensed people and still be in compliance with Virginia law. However, you must comply with the existing statutes to make it all work for you.