

# **Virginia**

## **Regulatory Hot Tip 2017 –5**

*Professional Insurance Agents Association of Virginia and DC, Inc.*

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### *Are you qualified to give legal advice?*

Whether you know it or not, each of you has offered legal advice, most of you without a license, to yourself, your business or even your clients. The murky waters surrounding insurance sales, insurance policies, etc. can be a quagmire for the insurance agent.

I don't want to know the circumstances of your offering legal type advice, but I want to remind you that you need to be careful. Certainly, you are proficient in reading and interpreting contracts (insurance policies) and understanding them. But, that does not make you an authority on all agreements.

Moreover, if your clients rely upon your advice to their detriment you could find yourself in a professional liability situation without the requisite coverage.

You guys are all experts in many different things because of your insurance agent experience, but be careful when you start giving advice, particularly when it borders on legal issues. Especially when advising clients or prospective clients, be sure and use appropriate disclaimers, and remind your customers or prospective

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**NolteLaw's practice focuses on general business matters (such as business formation, acquisitions, dissolutions and employment questions) and administrative law issues (such as rulemaking and compliance) affecting regulated entities. Our diverse client base includes restaurants, healthcare providers, contractors, fiber-optic and conduit installers, business entrepreneurs, telecommunications companies, insurance entities, financial institutions, mortgage loan originators, water & sewer providers, and insurance receiverships. Jo has served as attorney for the Virginia State Corporation Commission and as in-house counsel to a privately owned national corporation. She also owned and operated an insurance surplus lines brokerage agency and an insurance consulting business.**

clients that they should seek the services of a legal professional. *Make sure that your client understands that you are an insurance professional but not an attorney!*

I will offer two scenarios of border line dispensing of legal/insurance advice that you may be trapped into by your clients. The first is in the life and health arena, which most of you do not involve yourselves with. But, let's assume that a buy-sell agreement comes over your desk that your clients wish to purchase life insurance to support. You start looking at the buy-sell agreement and it doesn't look like others that you have seen. So, you start asking your client whether the buy-sell agreement really does what the client wants it to do. Obviously, you need to review the agreement to locate the proper insurance coverage; but be careful in making recommendations or asking questions about the content of the agreements. If you believe that your client ought to revisit the agreement with their legal professional don't hesitate to tell them, but make it clear that you are qualified to render insurance advice and not legal advice.

A property and casualty example, could go like this: You are asked to provide business insurance for your customer. In the course of reviewing the business portfolio, you review some contracts that seem to be missing some critical language in them based on others that you have reviewed in the context of securing insurance. When you raise questions with your client about these contracts, you suggest other language that you have seen that might be more appropriate. The client elects not to go back to his/her legal advisors but changes the language ongoing. Unfortunately, you are unaware of certain facts that require the contracts to be written exactly as they were originally stated. Because of your advice, your client finds himself or herself in a law suit. Oh my, what will your professional liability insurance carrier say about this? Were you really giving insurance advice or were you giving legal advice?

It can happen so easily. Particularly for those of you who have personalities such that many of your business clients also become your personal acquaintances. This could have been easily remedied with a disclaimer----you need to check with your attorney, but this language doesn't look right to me. Maybe it is. Maybe it isn't. But, you should check with your legal advisor about it.

Most of you would never give accounting advice because you know that you are not qualified to do so, but somehow because of the nature of the insurance business, you are less reluctant to put on the brakes when giving legal-type advice to your clients.