

# *Virginia*

## *Regulatory Hot Tip 2017 – 7*

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

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### Trying to Serve Multiple Masters

At long last I finally received a Hot Tip suggestion from an insurance agent. Thank you, Insurance Agent, for your recommendation for a Hot Tip. Though this article probably doesn't answer your question completely, it offers some insight as to the analysis that an agent must go through in figuring out which master he or she serves. I thought that might be a relevant topic for a Hot Tip discussion because it oftentimes feels as though we are on a tight wire balancing multiple interests and trying to serve multiple masters.

All Virginia agents, be you independent or captive, know of what we speak. You are torn between your alliance to your insured client and your alliance to your insurance companies. Though most of you have a couple of insurers that you go to regularly, you may still have other insurers through whom you place business from time to time.

Recently, I was in conversation with another attorney about this very topic. Specifically, the question arose in the context of an insurance claim as to whom the

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agent owes his or her loyalty. Is the agent's loyalty owed to the insurer writing the coverage or the insured? Who does the agent really represent?

As I explained to this attorney, unlike some other states, Virginia does not recognize a separate broker's license for standard market coverages. Everyone who sells insurance here is initially licensed as an insurance agent. Though an excess and surplus lines ("E&S") broker is a recognized Virginia broker in the non-admitted marketplace, even an E&S broker starts out in the process of becoming an E&S broker as a licensed insurance agent.

The good news is that Virginia law offers some clear authority on which master the Virginia agent serves. Focusing for a moment on VA Code § 38.2-1801 which states, in part, that, "A licensed agent shall be held to be the agent of the insurer that issued the insurance sold, solicited or negotiated by such agent in any controversy between the insured or his beneficiary and the insurer." Moreover, most agents have contracts with their insurers which also outline the standards and expectations of the agent as between the insurance company and the agent.

This is in contrast to other states which license brokers. Generally, before one can become a broker, one must have already been licensed by the state as an insurance agent. But, brokers may have some additional licensing hurdles to fulfill.<sup>1</sup> Traditionally, it is said that a broker represents the insured customer, focusing the broker's efforts in the customer's best interests as contrasted with an agent who represents and works for the insurer.<sup>2</sup> Obviously, the agent finds that his or her role is also to attempt to locate the coverages that the insured wants and needs. Similarly, brokers and agents generally derive their commissions from a portion of the premium that the insured customer pays to the insurance company.<sup>3</sup>

But, as we all know, you, the insurance agent, live, work and play in your local community. When a customer arrives breathlessly on your doorstep, that customer reasonably believes you are there to assist them. Indeed, the confusing thing is that, part of your service, many times, involves your servicing of the customer's account. In fact, agents often advertise that they give better service to the customer than their competitor down the street. How else can you really differentiate yourself in the market place?

So, where does your allegiance lie and whom do you serve? For you independent guys, this becomes more complicated because many times you are quoting

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<sup>1</sup> <https://www.bbgbroker.com/what-does-an-insurance-broker-do/> (last visited May 17, 2017).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

on accounts using several insurance companies before really deciding where you are going to place the customer's business. You ask yourself questions like, which insurance company in my stable of companies offers the best rate? Who gives the client the best service? The best coverage? And, other relevant insurance questions to obtain the best quote for the customer. Moreover, if you can't find the coverage in your admitted marketplace of carriers, you may go in search of a non-admitted market through an E&S broker. Indeed, this is another wrinkle in the question of to whom you owe your alliance.

When claims time comes, many of you, as Virginia agents, pride yourselves on your ability to facilitate claims processing, and indeed, may use your expertise in this area as a further way to market you and your agency. You tell your customers that you will be there through the good times and the claims times with your customer---the insured. Oftentimes, you assume the role of advocate on the insured's behalf with your underwriting companies.

So, I believe that, though the VA Code clearly says---in black and white--- that legally you are the agent of your insurer, there are times when the pendulum swings a little off center, and you find yourself as an advocate, friend, confidant and yes, agent, of your customer. Just beware and be careful of your contractual commitment to your insurer while servicing the customer. You need to be able to balance this oftentimes tricky dual relationship.

There is no bright line answer to this dilemma, you have enough problems finding new customers, keeping existing customers and then finding more customers---and you don't really think about this issue very long or deeply. Somehow, over the years, agents and the companies with which they are licensed have worked through these issues and for the most part it is a non-issue. But, every once in a while, it is important. Particularly in situations where your insurer is being sued for some bad faith practice, but you, the agent, have found and indeed had most of the contacts with the customer. You may find yourself dragged into a matter simply because of your status as an intermediary. Your insured may not even have had much contact with the insurer, only with you. Then the facts dictate who did what, rightly or wrongly.

In summary, the agent finds himself or herself straddling the fence in trying to keep the insurance companies with whom he or she is licensed happy with the agent's production, while oftentimes trying to find the most appropriate coverage for an insured customer. That is the nature of the beast. Be careful that you don't find yourself mired in a quagmire between the two---such that you find you have lost the customer

and the insurance company. It is a delicate balance, but one that agents have been handling for decades and so can you.