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April 19, 2002 Memorandum 2002-3L

MEMORANDUM

TO: All Authorized Insurers, General Agents, Nonresident Agents, Subagents, and Solicitors

FR: Wayne C. Metcalf, III
Insurance Commissioner

RE: Insurance Producer Licensing

This memorandum is intended to assist licensees by providing information and guidelines regarding the new insurance producer licensing law. Licensees are urged to familiarize themselves with the new law in order to facilitate a smooth transition toward the implementation of new licensing procedures.

INFORMATION ABOUT PRODUCER LICENSING

Presently, Hawaii is one of more than 39 States enacting legislation on producer licensing. Hawaii's law was adopted as Act 216, 2001 Session Laws of Hawaii. The purpose for Act 216 was to bring Hawaii's licensing laws into conformity with federal guidelines established by the Financial Services Modernization Act of 1999, commonly known as the Gramm-Leach-Bliley Act ("GLB"). A key component to GLB was to mandate uniformity or reciprocity among the various State insurance licensing laws. Act 216, which adopted the National Association of Insurance Commissioners' Producer Licensing Model Act, conforms to the federal guidelines of GLB. The provisions in Act 216 are codified in Chapter 431, Article 9A, Hawaii Revised Statutes

QUESTIONS AND ANSWERS ABOUT PRODUCER LICENSING

The Insurance Division has received many questions about the new insurance producer licensing law. The questions were received from general agents, subagents, solicitors, as well as nonresident agents from other states. In an effort to disseminate the information to all licensees, the Insurance Division has consolidated some of the more frequently asked questions into the following categories:

I. License

When will the new insurance producer licensing law take effect?
Act 216 will take effect on July 1, 2002.

Who needs to be licensed?
Any person or business entity that sells, solicits, or negotiates insurance in this State must be licensed as a resident or nonresident producer in accordance with Hawaii's producer licensing law.

Will I receive a new producer license?
Yes. A new producer license will be issued for the same lines of authority which exists under your current general agent, subagent, and/or solicitor's license.

Will I receive a new license number for my producer license?
Yes. The new license number will appear on the producer license. The license will also include a "vendor number", which is used by the Insurance Division to track fee payments, CE credits, and other licenses held by the licensee.

If I hold more than one license (general agent, subagent, and/or solicitor), will I receive more than one producer license?
No. Only one producer license will be issued.

What is a "business entity"?
The term is defined as "an association, corporation, individual, limited liability company, limited liability partnership, partnership, person, or other legal entity."

What are the license requirements for a business entity?
A business entity acting as a producer is required to obtain an insurance producer license. The business entity is also required to designate an individual who will be responsible for the business entity's compliance with the insurance laws in Hawaii. The individual designated must be a licensed producer.

Can a licensed producer designated by one business entity also be designated by other business entities to serve in the same capacity?
A licensed producer designated or empowered by a business entity as the person responsible for the business entity's compliance with the insurance laws shall not be so designated or empowered by more than one business entity; except when the business entities are affiliates of each other.

Do I need a producer license to administer or enroll eligible individuals in group benefit plans?
A producer license is not required if the person's activities are limited to securing and furnishing information for the purpose of group life insurance, group annuities, group accident and health insurance, group property and casualty insurance, or for the purpose of enrolling individuals under such plans, or otherwise assisting in administering the plans, or where no commission is paid to the person for the services.

Will I be licensed for the same lines of insurance when my old license is replaced by the new producer license?
The new producer license will list the same lines of insurance that existed previously: Life, Accident and Health or Sickness, Property, Marine and Transportation, Vehicle, General Casualty, Surety, and Title insurance.

Must I have an appointment before I receive my producer license?
No. The issuance of a producer license is not contingent on you having an appointment with an insurer or producer.

II. License Application

If my current license is active, will I be required to complete a new application to receive my producer license?
No. If your current license is active, you will not be required to complete a new license application.

What type of license application will be used for the producer license?
The Insurance Division will accept the NAIC uniform application for resident and nonresident producer licensing.

What type of insurance license application will be used for a business entity?
The Insurance Division will accept the NAIC uniform business entity application for resident and nonresident business entities.

Where can I obtain the license applications?

The NAIC uniform applications should be available prior to July 1, 2002. You can get the forms from the Insurance Division or have the forms downloaded from the Division's web site at **www.state.hi.us/dcca/ins.**

How do I obtain a new resident producer license in Hawaii?
If you have not previously held a producer license in Hawaii or any other state, you will need to take the insurance examination for the line of insurance you wish to sell in this State. Upon receiving a passing grade, you will need to complete the uniform resident license application and submit the completed application to the Insurance Division.

Will the Insurance Division accept electronic license applications?
At present, the Insurance Division is not in the position to accept license applications electronically.

III. License Fee

How much is the issuance fee for the producer license?
The cost is $75.

How much is the renewal fee for the producer license?
The license is renewable every two years at a cost of $75.00 per year or $150.00 for the two-year renewal period.

Will I be required to pay the issuance fee for the new producer license?
No. You will not be charged the issuance fee if the producer license is issued as a replacement for your current active license.

If I paid the renewal fee for my current license(s), will I receive a refund?
In lieu of a refund, a credit will be applied toward the renewal of your producer license.

Is there a penalty fee for late renewal?
Yes. The penalty is fifty percent (50%) of the unpaid renewal fee.

If I am on active military duty, do I need to comply with license renewal procedures?
A licensed producer who is unable to comply with license renewal procedures due to military service may request a waiver from the Insurance Commissioner. The Commissioner may grant an extension of time for a period equal to the number of days the licensee was on active military duty.

IV. License Examination

What is the passing score for the producer license examination?
The minimum passing score is 75.

If I am currently a solicitor, do I need to retake the examination to qualify for a producer license?
No. If your current solicitor's license is active, you need not retake the license examination.

Do CLU (Charter Life Underwriter) or CPCU (Charter Property & Casualty Underwriter) designations exempt their holders from producer license examination?
No. CLU and CPCU designations do not exempt their holders from license examinations.

If my license is inactive because I failed to pay the renewal fee, do I need to retake to the examination if I decide to reinstate my license?
It depends on how long your license has been inactive. Section 431:9A-107(c) states; "An insurance producer who allows the producer's license to lapse may, within twenty-four months from the due date of the renewal fee, reinstate that license without the necessity of passing a written examination. If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty percent of the fee."

If I move to Hawaii and was previously licensed in another State, do I need to take the insurance examination?
If there is a reciprocal agreement between Hawaii and the state you moved from, no insurance examination will be required if the uniform application for the new producer license was filed within 90 days of the date you terminated your license in the previous state. The new license will be for the same lines of insurance you were authorized to write under the previous license.

V. Appointments

How soon must the insurer appoint a producer or business entity?
The insurer must file the notice of appointment within fifteen (15) days from the date the insurance agency or business entity contract is executed or the first insurance application is submitted to the insurer. If the appointment form is not received within fifteen days, the appointment shall take effect on the date the Commissioner receives the appointment form.

If my appointment is terminated, must I cancel my producer license?
No, although you may no longer represent the insurer that terminated the appointment.

Can a producer be appointed by more than one insurer? Yes.

Can a producer be appointed by more than one producer? Yes.

Can a Hawaii producer appointment a nonresident producer? Yes.

Must the notice of appointment and notice of termination of appointment be filed with the Insurance Commissioner? Yes.

If I have several current appointments as a general agent, subagent, and/or solicitor, will the current appointments be cancelled after July 1, 2002?
No. Unless terminated by the parties, the current appointments will remain active. The Insurance Division will revise the appointment records to reflect the appropriate appointment as to insurer and/or producer.

As a licensed producer, must I first have a company or producer appointment before I can start selling insurance?
The sale, solicitation, or negotiation of insurance may take place before the appointment, provided the notice of appointment is filed within fifteen (15) days from the date the first insurance application is submitted to the company. A producer who attempts to sell, solicit, or negotiate insurance before being appointed is required to disclose to the client that the sale is being consummated without an appointment.

VI. Nonresident Producer License

If I intend to apply for a nonresident producer license in another state, must I complete a nonresident license application and take the examination?
No, providing that there is reciprocity between Hawaii and the State to which you intend to apply for license. Specifically, you will be issued a nonresident producer license if:

a. You are licensed as a resident producer in Hawaii and in good standing;
b. You submit a request for licensure and pay the fee;
c. Transmit to the Commissioner the license application filed in Hawaii; and
d. Hawaii awards a license to a resident of that state on the same basis.

What is reciprocity or reciprocal agreement?
Except for the procedures listed in the previous question, reciprocity is an agreement between states which would allow the Insurance Commissioner to waive any requirements for a nonresident license applicant with a valid license from the applicant's home state so long as the applicant's home state awards nonresident licenses to residents

of this State on the same basis. For example, a reciprocal agreement between Hawaii and South Dakota would allow resident producers from the respective states to be licensed as nonresident producers in the reciprocal states without having to take the examination.

As a nonresident producer, will I still be required to place the business through a resident licensed producer in Hawaii? No.

Can a nonresident producer become a surplus lines broker in Hawaii?
Yes, provided there is a reciprocal agreement between Hawaii and your state of domicile. If you are a licensed resident surplus lines producer in your state, you may be licensed as a nonresident surplus lines producer in Hawaii.

VII. Commissions

What are the regulations regarding the payment or sharing of commissions?
The applicable statute is section 431:9A-113, which reads as follows:

> "(a) An insurance company or insurance producer shall not pay a commission, service fee, brokerage fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.
>
> (b) A person shall not accept a commission, service fee, brokerage fee, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.
>
> (c) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this State if that person was required to be licensed under this article at the time of the sale, solicitation, or negotiation and was so licensed.
>
> (d) An insurer or insurance producer may pay or assign commissions, service fees, brokerage fees, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate in this State, unless the payment violate section 431:13-103."

If I leave the insurance business by surrendering my producer license, may I continue to receive commissions on old business?
Renewal of deferred commissions may be paid to a person if the person was required to be licensed and was at the time of the sale.

If I am a licensed producer appointed by another producer, from whom do I receive commissions?
The insurer or appointing producer may pay the commissions. The commission payments should be determined by contract.

As a producer, can I share commissions with my employee(s)?
An employee of an insurance company or insurance producer who receives commissions or remunerations on policies written or sold in this State is not exempt from being licensed. Therefore, the sharing of a commission with an employee who is not licensed may constitute an unlicensed activity.

Can a licensed producer compensate a person who is not licensed for referring insurance business to the producer?
Yes, providing that the person who referred the business had no involvement with the sale, solicitation, or negotiation of insurance. Also, neither party is permitted to engage in any unfair or deceptive act or practice, such as "rebating", as defined in section 431:13-103, Hawaii Revised Statutes.

Please direct additional questions or inquiries regarding the insurance producer licensing law to:

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Insurance Division
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Honolulu, HI 96811
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