

COLLECTING ONLY A FEE FOR
THE SALE OF INSURANCE

by
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In an unusual twist, the question of whether an insurance agent can forgo a commission and receive only a fee from the insured for the placement of insurance coverage was recently posed to me. Ordinarily, agents and agencies are looking to increase their revenue by receiving both a commission and a fee for the placement of insurance coverage. In previous articles for this publication, I have explained how that can be done and chronicled the changes made by the Georgia General Assembly in the laws that govern that situation. But there are situations, mostly involving commercial risks, where it may make sense to agree only on a fee for the placement of insurance coverage.

My first reaction to the above question was of course an insurance agent can agree with the insured to forgo a commission on the placement of insurance coverage in exchange for the payment of an agreed on fee by the insured. However, upon further reflection and review of the applicable provisions of the Georgia Insurance Code, although my initial reaction proved to be correct, there are qualifications and a big trap for the unwary. First, the qualifications.

The Georgia Insurance Code specifically prohibits an insurance agent “who is not licensed as a counselor” from accepting or receiving “any compensation from the customer for the placement of insurance.” With respect to the above question, this prohibition raises the issue of whether a person must be licensed as an insurance agent to sell insurance or is a counselor’s license sufficient. Although the Georgia Insurance Code is not clear on this point, a close review of the definitions of agent and counselor in the Code indicates that a person must be licensed as an insurance agent in order to solicit and sell an insurance policy. Thus, in order to receive only a fee from the insured for the placement of insurance coverage, one must be licensed as both an insurance agent and a counselor.

Since the insurance agent/counselor is not receiving compensation from the insurance company as well as the insured in this situation, it appears that the disclosure requirements imposed by the Code where that is the case need not be satisfied. Those requirements are found in O.C.G.A. Sections 33-23-46 and 33-23-1.1, and have been the subject of previous articles in this publication. The latter statute also limits the receipt of both a commission and a fee to insurance coverages involving commercial risks. That requirement is probably not applicable to this situation either for the same reason, but in today’s business environment, prior disclosure of the type of services that will be performed and the compensation to be paid for them, preferably in writing, would be a good business practice.

Given the inapplicability of O.C.G.A. Section 33-23-1.1 to this situation, an insurance agent/counselor could agree to forgo a commission and accept only compensation from the insured in personal lines, as well as commercial lines,

transactions. But for the reason explained below, such a compensation arrangement may well not be possible in every, or even in most, cases.

This brings us to the big trap for the unwary. The Georgia Insurance Code prohibits an insurance agent from “paying, allowing, giving, or offering to pay, allow, or give directly or indirectly, as inducement to any contract of insurance, any rebate of premiums payable on the contract, . . . , or any valuable consideration or inducement whatever not specified in the contract, except in accordance with an applicable rate filing, rating plan, or rating system filed with and approved by the Commissioner.” Given this prohibition, if by agreeing to forgo a commission on a specific insurance coverage, the insured would pay less in premium for the same coverage than another insured whose agent did not agree to forgo the commission, the insurance agent/counselor will have arguably engaged in an unfair method of competition and would be subject to discipline by the Insurance Commissioner’s office. The only time an insurance agent/counselor will be able to forgo a commission and accept compensation only from the insured without facing the possibility of such disciplinary action is when the insurance coverage in question can be issued net of a commission in accordance with “an applicable rate filing, rating plan, or rating system filed with and approved by the Commissioner” or where the coverage in question can only be obtained net of commission.

In summary, the answer to the question posed at the beginning of this article is that a person who is licensed as both an insurance agent and a counselor can agree to forgo payment of a commission from the insurance company for the placement of insurance coverage and accept only a fee from the insured if the insurance coverage in question can only be issued net of commission or such issuance of the coverage has been approved by the Insurance Commissioner.

This article is not intended to provide “legal advice” on the issues discussed in it. It is only for information purposes. The reader should seek advice from an attorney who is knowledgeable in this area of the law about their specific situation before acting.

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