

North Carolina Regulations For Life

Up to this point, the concepts that you have covered have been ones that apply to the insurance industry as a whole. Now that you have examined insurance policies and their provisions, you can turn your attention to regulations and definitions that apply only to this state. You'll learn about a variety of topics, from the duties of the Insurance Department to licensing laws. This chapter is full of definitions and numbers for time limits and dollar amounts. Make sure that you know them for your exam.

TERMS TO KNOW

Authorized insurer — insurer who has received a Certificate of Authority from the department of insurance to transact insurance in this state

Business entity — a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity

Cease and desist — to stop or discontinue

Coercion — forceful act or threat aimed to influence a person to act against his or her will

Commission — payment to the agent by the insurance company for placing insurance, usually a percentage of the policy premium

Disclosure — revealed information to help someone make an intelligent and educated decision

Exempt — not subject to an obligation

Home office — insurer's headquarters, principal place of business

Inducement — an offer that attempts to influence the other party

Insolvent — unable to meet financial obligations

Restitution — restoration to the original condition or repayment

Statute — a formal written law enacted by legislature; insurance statutes can be found in the state Insurance Code

Subpoena — an order for someone to appear as a witness or submit testimony or evidence

Surplus lines — insurance not available from authorized insurers; placed with nonadmitted insurers who specialize in offering insurance to the high-risk market

A. General Definitions

A **contract of insurance** is defined in North Carolina statutes as an agreement by which the insurer is bound to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity or reimbursement for the destruction, loss, or injury of something in which the other party has an interest. All contracts of insurance that are made within North Carolina are subject to the laws of this state.

Please take note of the following definitions:

- *Commissioner* means the Commissioner of Insurance of North Carolina;
- *Department* means the Department of Insurance of North Carolina;
- *NAIC* means the National Association of Insurance Commissioners; and

- *Person* means an individual, partnership, firm, association, corporation, joint-stock company or any similar entity.

1. Insurance Companies

Insurance companies can be classified in a variety of ways based on ownership, authority to transact business, location of incorporation (domicile), marketing and distribution systems, or rating (financial strength).

As you read about different classifications of insurers, keep in mind that these categories are not mutually exclusive, and the same company can be described based on where it is located and allowed to transact the business of insurance, who owns it, and what type of agents it appoints.

Insurance companies are classified according to the **location of incorporation** (domicile). Regardless of where an insurance company is incorporated, it must obtain a Certificate of Authority before transacting insurance within the state.

Know This! A *domicile* refers to the location where an insurer is incorporated, not necessarily where the insurer conducts business.

A **domestic** insurer is an insurance company that is incorporated in this state. In most cases, the company's home office is in the state in which it was formed — the company's domicile. *For instance*, a company chartered in Pennsylvania would be considered a Pennsylvania domestic company.

A **foreign** insurer is an insurance company that is incorporated in another state, the District of Columbia, or a territorial possession. Currently, the United States has 5 major U.S. territories: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

For example, a company chartered in California would be a foreign insurer within the state of New York. A company chartered in Puerto Rico will be foreign in any U.S. state.

An **alien** insurer is an insurance company that is incorporated outside the United States.

2. Fraternal Benefit Societies

A **fraternal benefit society** is an organization formed to provide insurance benefits for members of an affiliated lodge, religious organization, or fraternal organization with a representative form of government. Fraternals sell only to their members and are considered charitable institutions, and *not insurers*. They are not subject to all of the regulations that apply to the insurers that offer coverage to the public at large.

In most states, fraternal benefit societies are permitted to issue life insurance (including endowments), health insurance (including medical and disability), and annuities. They do not issue property or liability policies.

B. Commissioner Of Insurance

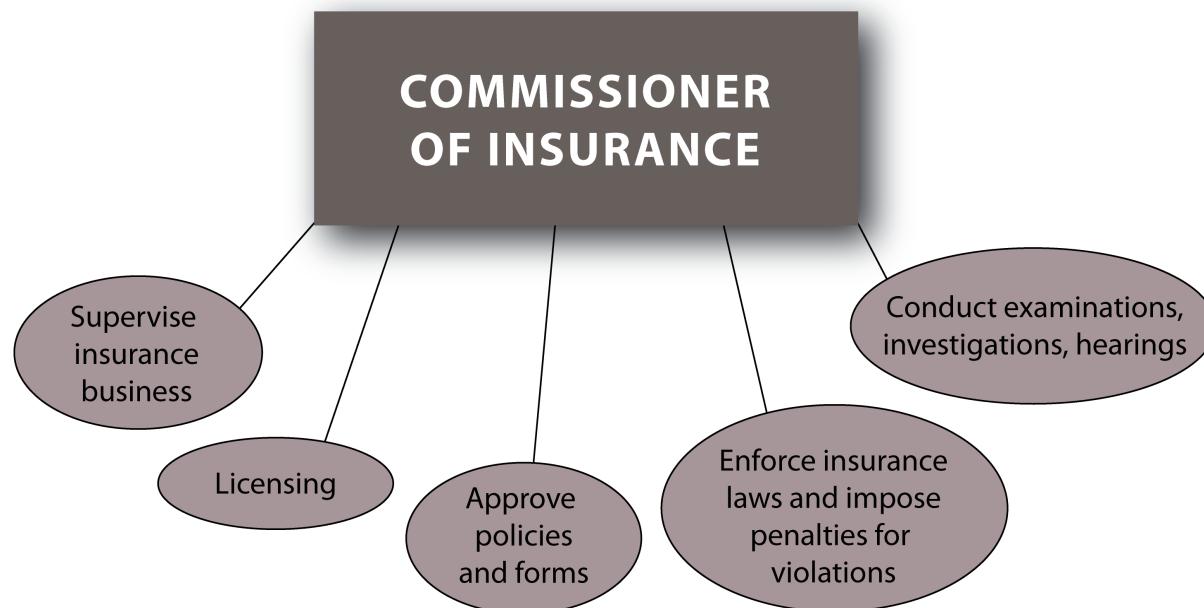
1. Election and Term of Office

The chief officer of the Insurance Department is called the **Commissioner of Insurance**. The Commissioner is elected to office by the people. The term of office begins on the first day of January after the election and lasts for **4 years** or until the Commissioner's successor is elected and qualified. If a vacancy occurs during the term, the Governor will appoint a replacement Commissioner for the unexpired term.

2. General Power and Duties

The general powers, duties, and responsibilities of the Commissioner include the following:

- Enforcing and carrying out all the provisions of the General Statutes;
- Fixing and collecting fees for services performed by regulators;
- Adopting rules and regulations to enforce provisions of the General Statutes;
- Adopting rules pertaining to solicitation of proxies, including financial reporting of equity securities of any domestic stock insurance company;
- Approving forms used by companies, association, orders, or bureaus;
- Receiving and thoroughly examining all financial reports;
- Reporting in detail to the Attorney General any violation of insurance laws;
- Instituting civil actions or criminal prosecutions by the Attorney General for any violation;
- When requested by any citizen of this state, providing a synopsis of the provisions of any insurance contract which is offered or issued;
- Compiling and making available to the public lists of rates charged, including deviations, and explanations of coverages that are provided by insurers.



3. Exams, Hearings, and Investigations

The Commissioner regulates insurance companies authorized to do business in this state and has the power to examine and investigate the affairs of every insurance institution or agent. The purpose of the examination of insurers' books and records is **to ensure that the companies remain solvent and conduct business**.

in compliance with state laws and regulations pertaining to licensing, policy forms, rates, claims, and market conduct.

The Commissioner may conduct examinations as frequently as deemed necessary, but must examine every domestic insurer at least once every **5 years**. The examinee will be held responsible for charges incurred during the examination.

If the Commissioner or an investigator finds that there is evidence to charge an individual with a criminal violation of insurance law, the Commissioner may arrest that person with warrant or have the person arrested.

Because the Commissioner's role is to enforce insurance laws and to protect the public from unfair trade practices, if the Commissioner suspects that an insurer or its agent has committed a violation or is engaged in an unfair trade practice, the Commissioner may issue a statement of charges and hold a **hearing** for any purpose deemed necessary (within the scope of the Insurance Code).

All hearings will be held at a time and place designated in a written notice provided by the Commissioner. The notice must be provided at least **10 days** prior to the hearing, and must also state any specific charges.

Business Records

All companies, agents, or brokers doing any kind of insurance business must make and keep a full and correct record of business transactions. Information from these records must be furnished to the Commissioner on demand. Records include relevant numbers, dates, terms, amount of insureds, premiums, and individuals responsible for issuing policies, certificates, or renewals.

Records must be maintained for at least **5 years after the termination** of the transaction with an insured.

Insurers must also maintain **claim reports** that specify the inception, handling, and disposition of each claim. They must be retained for at least **5 years** after the claim is settled or until the Commissioner has adopted the report of any general examination that contains a review of these records, whichever is later.

Every insurer transacting business in North Carolina must appoint an employee or associate responsible for maintaining records and reports.

Failure to maintain records may result in license suspension or revocation for no less than **1 months** to no more than **6 months** for the first offense and **1 year** for the second offense. Refusal to provide records may result in a **Class 1 misdemeanor**.

Complaint Record

Each insurer or its agents must maintain, for **at least 5 years**, a log of **all written complaints** listing the following:

- Department file number;

- Name of insured;
- Nature of the complaint,
- Department subject to the complaint;
- Policy or claim number of the insured; and
- Disposition of the complaint.

Record Keeping

The Commissioner is empowered to make rules and regulations governing the recording and reporting of insurance business transactions by insurance agencies, agents, and brokers. Failure to comply with this rule can result in penalties imposed by the Commissioner. If a person refuses to comply with this regulation or willfully makes any false statements related to the matter, that person can be charged with a Class 1 misdemeanor and have his/her license suspended or revoked.

Any person caught violating rules regarding records or reports may face a penalty after both notice and hearing are provided. For the first offense, a person may have his or her license suspended or revoked for between **1** and **6 months**. For the second offense, a license may be suspended for **1 year**.

Investigation of Charges

When a citizen files a complaint against an authorized insurer regarding possible violations or when the Commissioner deems necessary, the Commissioner will investigate the matter and examine (either directly or through accredited representatives) the officers or agents, books, records, and papers of the insurer.

If the Commissioner finds that any complaint against a company is justified, the company must pay any penalties and the expenses of the investigation. If the company refuses or neglects to pay, the Commissioner is authorized to bring a civil action for the collection of these expenses.

Investigation of Fraud and Financial Condition of Licensees

Any person who, with the intent to injure, defraud, or deceive an insurer, presents a written or oral statement as part of, in support of, or in opposition to, a claim for payment knowing that the statement contains false or misleading information concerning any fact or matter important to the claim is **guilty of a Class H felony**. In addition, any person who assists or conspires with another person to knowingly defraud or deceive an insurer is **guilty of a Class H felony**.

Each claim is considered to be a separate count. Upon conviction, if the court imposes probation, the court may order the defendant to pay restitution as a condition of probation. In determining the amount of restitution, legal fees incurred by the victim may be considered part of the damages caused by the defendant.

In a civil cause of action for recovery based upon a claim for which a defendant has been convicted, the conviction may be entered into evidence against the defendant.

Important note: The court may award the prevailing party compensatory damages, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations, the court may award three times the monetary damages.

During the course of an investigation of a known or suspected fraudulent insurance or reinsurance transaction or during the investigation of the financial condition of any licensee, the Commissioner may request any person to furnish information essential to the investigation. The person must cooperate with the Commissioner and release the information.

The Commissioner, acting without actual malice, is NOT subject to civil liability for libel or slander due to an investigation of any known or suspected fraudulent insurance claim or due to dissemination of information relating to any known or suspected fraudulent insurance or reinsurance claim, transaction, or act or the financial condition of any licensee.

4. Restraining Orders and Criminal Convictions

Whenever it appears to the Commissioner that any person has violated, is violating, or threatens to violate any provision of the General Statutes, he/she may apply to the Superior Court of any county in which the violation has occurred for a restraining order and injunction to restrain the violation.

If the court finds that any provision of the General Statutes has been violated, the court can issue an order restraining and injunction to restrain the violations.

If a person is convicted of a criminal violation of the General Statutes, the person's license will be **automatically suspended** until the license is reinstated by the Commissioner. The Commissioner can decide to reinstate the license at any time. As used in this regulation, "conviction" includes an admittance of guilt, a plea of guilty, and a plea of *nolo contendere* (*acceptance of guilt without admission*).

5. Penalties and Restitution for Violations, Administrative Procedures

The Commissioner may suspend or revoke any license after notice and opportunity for a hearing. In addition to, or instead of, suspension and revocation, the Commissioner may order a monetary penalty, a payment of restitution or both. A separate violation can be charged for each day that the violation occurs.

If the Commissioner orders the payment of a monetary penalty, the penalty must be in an amount between **\$100** and **\$1,000**. In determining the amount of the penalty, the Commissioner will consider the degree and extent of harm caused by the violation, the amount of money that benefited the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator.

Restitution to any state agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in any amount that would reimburse the agency for the expenses.

The Commissioner also has the authority to negotiate a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty or restitution.

6. Report to Commissioner

It is a duty of any licensed person, including employees or representatives of an insurance company, to notify the Commissioner of any violations of the General Statutes of the Insurance Code, or of insurer insolvency, and to provide a statement of all of the relevant facts and circumstances. This report is a privileged communication, and will not subject the person to any liability. The Commissioner may suspend, revoke, or refuse to renew the license of any licensee who willfully fails to comply with this section of the Insurance Code.

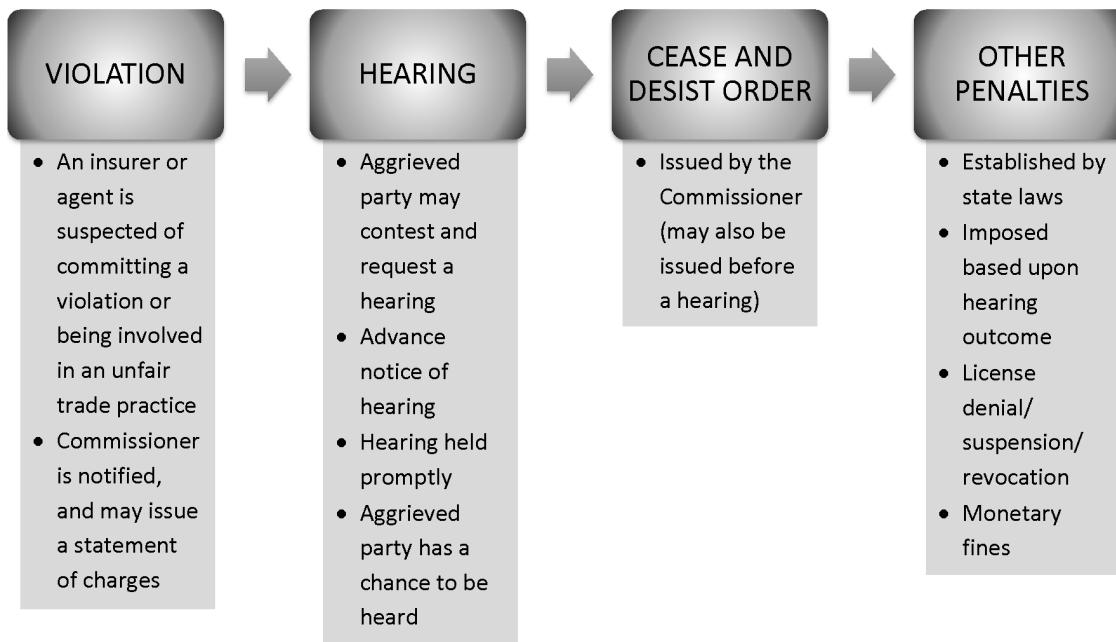
If, after a hearing, the Commissioner determines that a person has violated an insurance statute or regulation, the Commissioner will issue a **cease and desist order** and impose applicable penalties.

Any person who **willfully violates a cease and desist** order of the Commissioner with regards to unfair trade practices, may be subject to a fine from \$1,000 to \$5,000 for each violation. Violations of the cease and desist order pertaining to consumer information privacy will result in a fine of \$10,000 per violation.

When the Commissioner finds a company or person is in violation of insurance laws, the violation is reported to the North Carolina Attorney General.

If the Commissioner deems an insurer's violation to be actively harmful to policyowners, creditors, or the public, the Commissioner may issue an **emergency cease and desist order**, prior to a hearing. An emergency cease and desist order is effective upon the date specified in the order and must include a notice of hearing. Insurers issued emergency cease and desist orders may be granted an expedited hearing.

Violations and Penalties



C. Licensing Of Agents, Brokers, Limited Representatives And Adjusters

A person cannot sell, solicit, or negotiate insurance in this state unless licensed for the appropriate line(s) of authority. The purpose of licensing is to ensure that a producer meets educational and ethical standards required to fulfill producer's responsibilities to the insurer and to the public. Licensing regulations set out the requirements, procedures, and fees relating to the qualification, licensure, and appointment of insurance producers.

1. Types of Licenses

The following are important definitions pertaining to agent licensing:

Agent means a person licensed to solicit applications for, or to negotiate a policy of, insurance. A person **NOT duly licensed** who solicits or negotiates a policy of insurance on behalf of an insurer is an agent and becomes liable for all the duties, requirements, liabilities and penalties to which an agent of such company is subject. An agent **represents the insurer** and not the insured or their beneficiary.

Adjuster means any individual who, for salary, fee, or commission, investigates or reports to his principal relative to claims arising under insurance contracts other than life or annuity. An attorney-at-law who adjusts insurance losses from time to time, incidental to their practice, or an adjuster of marine losses are NOT deemed to be adjusters.

Broker means a person who, being a licensed agent, procures insurance for a party other than himself through a duly authorized agent of an insurer that is licensed to do business in North Carolina but for which the broker is not

authorized to act as agent. A broker **represents the insured** or his beneficiary and not the insurer.

Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity. This does NOT include a sole proprietorship.

Home state means North Carolina and any state or territory of the United States in which an insurance agent maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance agent.

Insurance producer or **producer** means a person required to be licensed to sell, solicit, or negotiate insurance. Insurance producer or producer includes an agent, broker, and limited representative.

License means a document issued by the Commissioner authorizing a person to act as an insurance agent for the kinds of insurance specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.

Limited lines agent means a person authorized by the Commissioner to sell, solicit, or negotiate limited lines insurance.

Negotiate means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, only if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers. *Negotiate* does not mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

Sell means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company. *Sell* does NOT mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

Solicit means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company. *Solicit* does NOT mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

Terminate means the cancellation of the relationship between an insurance agent and the insurer or the termination of an agent's authority to transact insurance.

Uniform Application means the current version of the NAIC Uniform Application for resident and nonresident agent licensing.

Resident and Nonresident

For licensing purposes, a **resident** is a person who lives in North Carolina or any county outside this state that borders North Carolina. Any license issued to an

applicant claiming residency in North Carolina will be void if the licensee holds a resident license in any other state, or claims to be a resident thereof.

A **nonresident producer** is an individual who is domiciled and licensed as a resident producer in a state other than North Carolina. A nonresident license in North Carolina will grant the same rights and privileges afforded a resident licensee and, subsequently, is subject to the same revocation, suspension and formal proceedings.

A person who is not a resident of this state may receive a nonresident producer license if he or she meets the following qualification:

- Is currently licensed as a resident and is in good standing in his or her home state;
- Has submitted the request for licensure in the form prescribed by the Commissioner and has paid the applicable fees;
- Has submitted or transmitted to the Commissioner a copy of the application for licensure that the person submitted to that person's home state, or in lieu of the same, a completed Uniform Application or Uniform Business Entity Application; and
- Lives in a home state that awards insurance producer licenses to residents of this state on the same basis (*reciprocity*). Note that reciprocity does not apply to surplus lines licensees.

Subject to the retaliatory provisions, there can be no requirement that a licensed resident agent or broker must countersign, solicit, transact, take, accept, deliver, record, or process in any manner an application, policy, contract, or any other form of insurance on behalf of a nonresident agent or broker or an authorized insurer or share in the payment of commissions related to such business.

Temporary License

The Commissioner may issue a temporary insurance agent license for a maximum period of **180 days** (or longer for good cause) without requiring an examination if the Commissioner deems that the temporary license is necessary for the servicing of an insurance business in any of the following cases:

- To the spouse or surviving spouse or court-appointed personal representative or guardian of a licensed insurance agent who dies or becomes mentally or physically disabled to allow adequate time for the transfer of the insurance business owned by the agent, for the recovery or return of the agent to the business, or for the training and licensing of new personnel to operate the agent's business;
- To a member or employee of a business entity licensed as an insurance agent, upon the death or disability of an individual designated in the business entity application or the license;
- To the designee of a licensed insurance agent entering active service in any of the US Armed Forces; or
- In any other circumstance that the Commissioner deems that the public interest will be served best by the issuance of this license.

The Commissioner may limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The Commissioner may require the temporary licensee to have a suitable sponsor who is a licensed agent or insurer and who assumes responsibility for all acts of the temporary licensee. The Commissioner may revoke a temporary license if the interest of insureds or

the public are endangered. A temporary license terminates upon the transfer of the business.

An individual requesting a temporary license due to the death or disability of an agent or broker will be licensed to represent only those insurers that had appointed the agent at the time of death or commencement of disability.

Limited Licenses for Rental Car Companies

A producer licensed in **limited lines for rental car companies** means the producer is only authorized to sell certain coverages relating to the rental of motor vehicles. *For example*, the Commissioner may issue a limited license to a rental car company. The applicant must file a written application with the Commissioner, and a statement that the applicant is trustworthy and competent to act as its insurance agent for this limited purpose.

The rental car company or franchisee may act as an agent for an authorized insurer only in connection with the rental of vehicles and only with respect to the following kinds of insurance:

- **Excess liability insurance** that provides coverage to the rental car company or franchisee and renters and other authorized drivers of rental vehicles, **in excess of the standard liability limits** provided by the rental car company in its rental agreement, for **liability arising from the negligent operation** of the rental vehicle;
- **Accident and health insurance** that provides coverage to renters and other vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs during the rental period;
- **Personal effects insurance** that provides coverage to renters and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period; and
- Any other coverage that the Commissioner may approve as meaningful and appropriate in connection with the rental of vehicles.

Insurance can only be issued under the following conditions:

- The rental period of the rental agreement **does not exceed 30 consecutive days**;
- At every rental car location where rental car agreements are executed, brochures or other written materials are readily available to the prospective renter that comply with the following requirements:
 - Summarize the terms of insurance coverage, including the identity of the insurer;
 - Disclose that the policies offered by the rental car company may provide a duplication of coverage already provided by a renter's personal auto policy, homeowner's policy, personal liability policy;
 - State that the purchase of insurance is not required to rent a vehicle;
 - Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim; and
 - Contain any additional information on the price, benefits, exclusions, conditions, or other limitations as regulated by the Commissioner.
- Evidence of coverage is provided to every renter who elects to purchase such coverage.

Any limited license issued also authorizes any salaried employee of the licensee to act as a limited licensee. No limited licensee may advertise or represent its employees as licensed insurance agents or brokers.

Restricted License for Overseas Military Agent

An individual may transact insurance under a **restricted license** as a foreign military sales agent representing a life insurance company in North Carolina, provided that the agent represents the insurance company only in a foreign country or territory and either on a United States military installation or with United States military personnel. The applicant must have the necessary training to serve as a life insurance agent and the insurance company. A restricted license can be **renewed annually**.

2. General License Requirements

No person can act as an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser without being properly licensed. An agent or broker may be licensed for any of the following lines of authority:

- *Life*: coverage on human lives, dismemberment by accident and benefits for disability income;
- *Accident and Health or Sickness*: coverage on sickness, bodily injury, and accidental death and may include benefits for disability income;
- *Variable Life and Variable Annuity*: prerequisite is to hold an active Life license and active FINRA registration; no additional examination is required;
- *Medicare Supplement and Long-Term Care*: licensee must also hold an Accident and Health or Sickness license, complete 10 hours of prelicensing education, and pass a separate exam;
- *Property*: direct or inconsequential loss or damage to property of any kind;
- *Casualty*: coverage of legal liability, including death, injury or disability, or damage to real and personal property;
- *Personal Lines*: property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
- *Limited line insurance*; or
- Any other kind of insurance permitted under state laws or administrative rules.

A person is only authorized to sell or solicit for the kinds of coverages under which that person is licensed.

A person may not simultaneously hold an adjuster's license and a property, casualty, or personal lines license. An agent who holds a property, casualty or personal lines license may apply for an adjuster's license without having to take the adjuster's examination if the agent applies for an adjuster's license within 60 days of surrendering a property and casualty license.

A limited representative may receive qualification for one or more licenses **without** examination for the following kinds of insurance:

- Dental services;
- Limited line credit insurance;
- Limited lines insurance;
- Motor club;
- Prearrangement insurance;
- Travel accident and baggage; or
- Vehicle service agreements and mechanical breakdown insurance.

No licensed agent, broker, or limited representative can solicit anywhere in the boundaries of this state, or receive or transmit an application or premium of insurance, for a company NOT licensed to do business in this state.

No agent can place a policy of insurance with any insurer unless the agent has a current appointment as agent for the insurer or has a valid temporary license.

A **business entity** that sells, negotiates, or solicits insurance must be licensed. Every member of the partnership and every officer, director, stockholder, and employee of the business entity that personally solicits or negotiates policies of insurance must qualify as an individual licensee.

A license issued to an agent authorizes him/her to act until the license is otherwise suspended or revoked.

Licensing Fees

The following table indicates the **license renewal fees** that are required to be paid each year **on April 1** for brokers, limited representatives, adjusters, or motor vehicle damage appraisers licenses:

TYPE OF LICENSE	FEE
Adjuster	\$75
Adjuster, crop hail only	\$20
Agent appointment cancellation (paid by insurer)	\$10
Agent appointment - individual	\$10
Agent appointment, Medicare supplement and long-term care - individual	\$10
Agent - overseas military	\$20
Broker - nonresident	\$50
Broker - resident	\$50
Broker - entity	\$100
Limited representative	\$20
Limited representative cancellation (paid by insurer)	\$10
Motor vehicle damage appraiser	\$75
Surplus lines licensee - corporate	\$100

Surplus lines licensee - individual	\$50
-------------------------------------	------

These fees are in lieu of any other license fees. The recertification fee is paid at the time of license or appointment renewal. Fees are nonrefundable.

Any person not registered who is required by law or administrative rule to secure a license must, upon application for registration, pay the Commissioner a fee of \$50. In the event that additional licensing for other kinds of insurance is requested, a fee of \$50 must be paid to the Commissioner upon application for registration for each additional kind of insurance.

Agent's Liability

Any person representing an insurer is personally liable on all contracts of insurance unlawfully they make for any company not authorized to do business in the state.

Unlawful solicitation, negotiation, or transaction of insurance with an unauthorized insurance company in North Carolina is a **Class 1 misdemeanor** if the individual did not know that the insurer was unauthorized. It is a **Class H felony** if the individual should have known that the insurer was unauthorized. Each illegal transaction is a separate offense.

3. Prelicensing Education and Examination Requirements

Education and Training

Individuals applying for a single-line license, such as Life, Accident and Health or Sickness, Property, Casualty, or Personal Lines, must first complete **20 hours** of prelicensing education. Each resident applicant for a *Medicare supplement and long-term care insurance license* must complete **10 hours** of instruction, which must include the principles of Medicare supplement and long-term care insurance and federal and North Carolina law relating to this insurance.

Examination

After completion and filing of the application, each applicant for license as an agent or an adjuster must **pass an examination**.

If the licensee has been found guilty of any violation of any provision of the General Statutes, the Commissioner may require any licensed agent, adjuster, or motor vehicle damage appraiser to successfully **pass a written examination**, testing his/her competence and qualifications as a condition to the continuance or renewal of his/her license. If an individual fails the examination, the licenses will be revoked until the individual has passed an exam.

Brokers Bond

In order to receive a broker's license, the applicant must **file a bond** with the Commissioner for at least **\$15,000**, or in lieu of a bond, deposit with the Commissioner the equivalent amount in cash or certificate of deposits.

A bond cannot be terminated unless at least **30 days** prior written notice is given by the surety to the licensee and the Commissioner. If a broker's license is terminated, the Commissioner must notify the surety within **10 business days**.

Other Requirements

An applicant must hold a valid agent's license at the time of application for the broker's license and throughout the duration of the broker's license. A broker's license will be issued to cover only those kinds of insurance authorized by the agent's license. Suspension or revocation of the agent's license will cause immediate revocation of the broker's license.

Denial of License

If the Commissioner finds that the applicant has not fully met the requirements for licensing, the Commissioner will refuse to issue the license and notify the applicant and the appointing insurer (if any), in writing, of the denial, stating the grounds for the denial.

The applicant will be notified in writing. Within **30 days** after service of the notification, the applicant may make a written appeal to the Commissioner for a review. The review must be completed without undue delay, and the applicant must be notified promptly in writing as to the outcome of the review. If the applicant still disagrees with the outcome, they may appeal for a hearing within **30 days**.

4. Application for License

A person applying for a resident insurance agent license must make application to the Commissioner on the Uniform Application. The applicant must meet the following requirements:

- Is at least **18 years** of age;
- Has not committed any act that is a ground for probation, suspension, nonrenewal, or revocation;
- Has satisfied any applicable requirements (educational requirement);
- Has paid the applicable fees; and
- Has successfully passed any examinations.

A business entity selling, soliciting, or negotiating insurance must obtain an insurance agent license. The business entity must pay the applicable fees and designate a licensed agent as responsible for the business entity's compliance with the insurance laws and administrative rules.

5. Appointment of Agents

Insurance agents can solicit, negotiate, or otherwise act as an agent for an insurer only when appointed by that insurer. An insurer can appoint any agent in this state.

When an insurer appoints a new agent, the insurer must file a notice of appointment with the Commissioner **within 15 days** after the date the first insurance application is submitted. Appointments continue in effect as long as

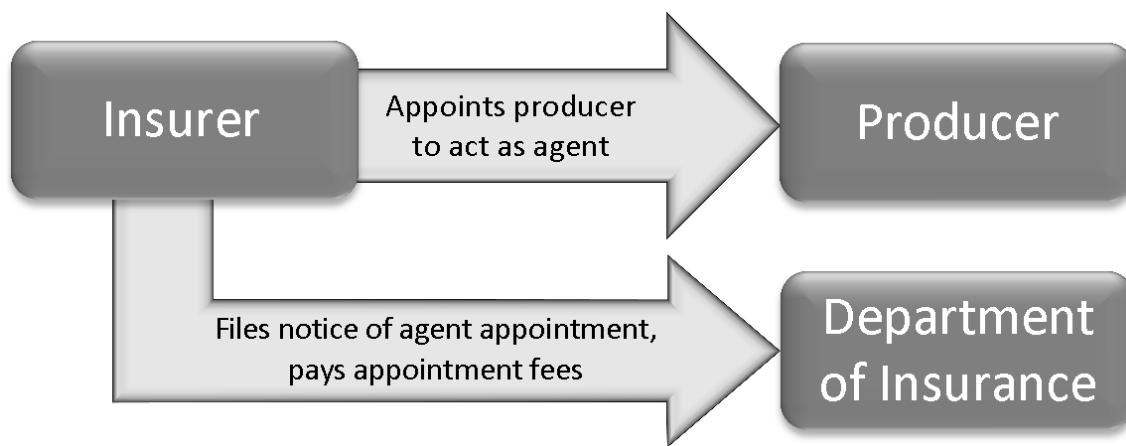
the appointed agent is properly licensed and the appointing insurer is authorized to transact business in this state, unless the appointment is cancelled. Prior to April 1 of each year, the insurer must pay the agent renewal appointment fee to the Commissioner.

If an insurer **terminates the licensee's appointment**, employment, or contract, the agent must notify the Commissioner **within 30 days**, using the prescribed form. Upon the written request of the Commissioner, the insurer may need to provide additional information, documents, records, or other data pertaining to the termination or activity of the agent.

The insurer or the authorized representative of the insurer must promptly notify the Commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Commissioner had the insurer then known of its existence.

Within 15 days after making the notification required, the insurer must mail a copy of the notification to the agent at the agent's last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

Within 30 days after the agent has received the original or additional notification, the agent may file written comments concerning the substance of the notification with the Commissioner. The agent must, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments will become a part of the Commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the agent.



6. Maintaining a License

Continuing Education

Each person who holds an insurance license in this state must complete **24 hours** of continuing education (CE) every 2 years. **Three** of those hours must be completed on the subject of **ethics**. The licensees may apply the extra hours toward their next compliance period. There is no maximum number of carryover credit hours. Any ethics or flood CE credits carried over to the next compliance period are converted to general credits.

Agents who hold an *adjusters, property, or personal lines license* must also complete **3 credit hours** of an approved Flood course every other compliance period in addition to the ethics requirement. *Nonresident licensees* who meet continuing education requirements in their home states meet the continuing education requirements of this state. Nonresident licensees whose home states have no continuing education requirements must meet the requirements of this state.

The Commissioner has established a staggered system for the credit hour compliance period, based on the month and year of birth of each individual licensee. Each person with an even-numbered birth year must meet CE requirements in an even-numbered compliance year. Each person with an odd-numbered birth year must meet CE requirements in an odd-numbered compliance year. The licensees are required to complete continuing education by the **last day of the licensee's birth month in the compliance year**.

Failure to comply with this rule will cause the license to lapse. The Commissioner may, for good cause shown, grant an extension of time to licensees to comply with these requirements, or charge an administrative fee of \$75, or both.

Licensees must maintain a record of completed CE hours for at least **5 years**, which will be available for inspection by the Commissioner.

Only a licensed insurance producer who is unable to comply with continuing education requirements due to **military service, or long-term medical disability** may request a waiver for continuing education requirements. The Commissioner may grant an exemption from CE requirements for up to one year if the producer submits the following documents:

- Deployment orders from the United States Department of Defense; or
- A notarized statement from a licensed physician stating the producer is unable to do the work he or she is licensed to do.

Licensees granted exemption prior to October 1, 2010, would continue to be **exempt** from continuing education requirements if a licensee:

- Is age 65 or older;
- Has been continuously licensed in the line of insurance for at least 25 years; or
- Holds a professional designation (such as CLU, LUTCF, CFP, or AAI) or certifies to the Commissioner annually that he or she is an inactive agent who does not solicit insurance applications or participates in the day-to-day operations of an agency.

Assumed Name

When an insurance producer conducts business under any name other than the producer's legal name, they must **notify the Commissioner before** using the assumed name.

Change of Address and Notification of Criminal Convictions

All applicants for licenses must provide the Commissioner with their residential and e-mail address for electronic messages. If there is any change in residential address or e-mail address, the licensee must notify the Commissioner **within 10 business days** after the licensee moves into the new residence or obtains a different e-mail address. A violation of this subsection does NOT justify the

revocation, suspension, or nonrenewal of the license or the imposition of any other penalty by the Commissioner. However, the licensee in violation will have to pay an administrative fee of **\$50** to the Commissioner.

If a licensee is convicted in any court for any crime or offense other than a motor vehicle infraction, the licensee must notify the Commissioner **within 10 days after the date of the conviction**.

7. Suspension, Probation, Revocation, or Nonrenewal of Licenses

The Commissioner may place on probation, suspend, revoke, or refuse to renew any license, for any one or more of the following causes:

- Incomplete or materially untrue information in the license application;
- Violating any insurance laws, or violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator;
- Obtaining or attempting to obtain a license through misrepresentation or fraud;
- Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
- Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- Having been convicted of a felony or of a misdemeanor involving dishonesty or a breach of trust;
- Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;
- Having an insurance agent license denied, suspended, or revoked in any other jurisdiction for reasons substantially similar to those listed here;
- Forging another's name on an application for insurance or any document related to an insurance transaction;
- Knowingly accepting brokered insurance business from an individual who is not licensed to broker that kind of insurance;
- Failing to comply with an administrative or court order imposing a child support obligation, after entry of a final judgment or order finding the violation to have been willful;
- Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax;
- Cheating on an examination for an insurance license or for a prelicensing or continuing education course;
- Willfully overinsuring property; and
- Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance.

The Commissioner must be notified in the event any bankruptcy, insolvency, or receivership proceeding affecting the person licensed. Each owner, manager, or officer of a business entity that is a licensed person will be responsible for providing this notification. Any person responsible for notifying the Commissioner must provide the notice **within 3 business days** after the commencement of the proceeding or the making of the assignment.

If the Commissioner refuses to grant a license, or suspends or revokes an existing license, any appointment of the applicant or licensee will also be revoked.

The Commissioner has the authority to enforce the provisions of, and impose any penalty or remedy authorized against any person who is under investigation for or

charged with a violation even if the person's license or registration has been surrendered or has lapsed by operation of law.

When a licensee is accused of any act, omission, or misconduct that would subject the license to suspension or revocation, the licensee may surrender the license for a period of time established by the Commissioner. A person or entity who surrenders a license cannot apply for licensure during the period of license surrender.

The following are the North Carolina regulations that apply to license-related notifications by the Commissioner and to the Commissioner:

- The Commissioner will notify every appointing insurer about any suspension, revocation, nonrenewal and surrender of a license.
- Once a license is suspended, revoked, nonrenewed or surrendered, the Commissioner will notify the Central Office of the NAIC.
- Any licensee who decides to **terminate his or her residency** in this state must deliver the insurance license to the Commissioner personally or by mail within **30 days** after terminating residency.
- The Commissioner may issue a **duplicate license** for any lost, stolen or destroyed license once the licensee submits a written request and pays required fees.

Acting without a License

Any person who assumes to act as principal, agent, or broker, or pretends to be licensed and engages in any form of insurance transaction (soliciting, collecting premiums, executing contracts, etc.) without a license as required by law may be deemed guilty of a **Class 1 misdemeanor**.

8. Commissions

Insurance companies and agents, or unlicensed persons, cannot pay a commission, service fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in North Carolina if that person is required to be licensed but is not.

Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance if the person was required to be licensed at the time of the sale, solicitation, or negotiation and was so licensed at that time.

Only agents who are duly licensed with appropriate company appointments, licensed brokers, licensed limited lines agents, or licensed limited representatives may accept any commission, fee, or other valuable consideration for the sale, solicitation, or negotiation of insurance.

Commissions, fees, or other valuable consideration may be assigned or directed to be paid in any of the following circumstances:

- To a business entity by a person who is an owner, shareholder, member, partner, director, employee, or agent of that business entity;
- To an agent in connection with renewals of insurance business originally sold by or through the licensed person or for other deferred commissions; and
- In connection with the indirect receipt of commissions in circumstances in which a license is not required.

9. Ethical Standards

When in contact with the public, agents, limited representatives, brokers, adjusters, appraisers, or other insurer's representatives are required to do the following:

- Promptly identify themselves and their occupation;
- Carry the license issued to by the Department of Insurance while performing their duties and display it upon request to any claimant, claim repairer, department representative, or any other person in the process of the person's duties; and
- Conduct themselves in such a manner as to inspire confidence by fair and honorable dealings.

It is **illegal** for a claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative to do any of the following:

- Accept any gratuity or tips from any provider of services for recommending that provider to claimants;
- Purchase salvage from a claimant;
- Intimidate or discourage any claimant from seeking legal advice and counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. Adjusters cannot advise or recommend any legal counsel to any claimant under any circumstance; and
- Cause any undue delay in the settlement of a property damage claim on account of the claimant's choice of a motor vehicle repair service.

Claims management persons, agents, agency employees, limited representatives, brokers, or other insurer's representatives are not permitted to recommend the utilization of a specific motor vehicle repair service without clearly informing the claimant that they are *under no obligation* to use the recommended repair service.

D. Insurance Information And Privacy Protection Act

1. Purpose

The purpose of **Insurance Information and Privacy Act** is to do the following:

- Establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance-support organizations;
- Maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness;
- Establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy;
- Limit the disclosure of information collected in connection with insurance transactions; and
- Enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

The obligations imposed by the Insurance Information and Privacy Act apply to insurance institutions, agents, or insurance-support organizations under the following conditions:

- Collecting, receiving, or maintaining information in connection with insurance transactions that pertains to natural persons who are residents of this state;
- Engaging in insurance transactions with applicants, individuals, or policyholders who are residents of this state; and
- Engaging in transactions involving mortgage guaranty insurance where the mortgage guaranty policies, contracts, or certificates of insurance are delivered, or renewed in this state (in the case of property and casualty insurance).

A person is considered to be a **resident** of this state if the person's last known mailing address, as shown in the records of the insurance institution, agent, or insurance-support organization, is located in this state.

This Act does not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to real property located in this state.

2. Pretext Interviews

Pretext interviews are interviews conducted in an attempt to obtain information about a natural person, performs one or more of the following acts, during which a person does any of the following:

- Pretends to be someone else;
- Pretends to represent a person he or she is not in fact representing;
- Misrepresents the true purpose of the interview; or
- Refuses to identify him or herself upon request.

Pretext interview cannot be used to obtain information in connection with an insurance transaction. A pretext interview, however, **may be used** to obtain information from a person or institution that *does not* have a recognized privileged relationship with the subject of the interview for the purpose of investigating a claim where, based upon specific information available for review by the Commissioner, there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.

3. Notice of Insurance Information Practices

An insurance institution or agent must provide a notice of information practices to all applicants or policyholders in connection with insurance transactions under the following circumstances:

- In the case of an *application for insurance* a notice must be provided no later than:
 - At the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or
 - At the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records.
- In the case of a *policy renewal*, a notice must be provided no later than:

- The policy renewal date, except that no notice is required in connection with a policy renewal under one of the following circumstances:
 - Personal information is collected only from the policyholder or from public records; or
 - A notice meeting the requirements has been given within the previous 24 months.
- In the case of a *policy reinstatement or change in insurance benefits*, a notice must be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice is required if personal information is collected only from the policyholder or from public records.

The notice must be in writing and state the following information:

- Whether personal information may be collected from persons other than the individual or individuals proposed for coverage;
- The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;
- The types of disclosures and the circumstances under which such disclosures may be made without prior authorization:
 - Only those circumstances need be described that occur with such frequency as to indicate a general business practice;
 - A description of the rights established under the general statutes and the manner in which such rights may be exercised; and
 - That information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

The insurance institution or agent **may provide an abbreviated notice** informing the applicant or policyholder of the following:

- Personal information may be collected from persons other than the individual or individuals proposed for coverage;
- Such information, as well as other personal or privileged information subsequently collected by the insurance institution or agent, in certain circumstances, may be disclosed to third parties without authorization;
- A right of access and correction exists with respect to all personal information collected; and
- The notice will be furnished to the applicant or policyholder upon request.

The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

4. Federal Privacy Disclosure Notices

In addition to the notice of information practices, an insurance institution or agent must provide the following to all applicants and policyholders *before the initial disclosure of personal information or at the time of the delivery of the insurance policy* a clear and conspicuous notice, in written or electronic form, of the insurance institution or agent's policies and practices with respect to the following:

- Disclosing nonpublic personal information to affiliated and nonaffiliated third parties, including the categories of information that may be disclosed;
- Disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and
- Protecting the nonpublic personal information of consumers.

The disclosure must include the following:

- The policies and practices of the insurance institution or agent with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the insurance institution or agent, and including the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided;
- The policies and practices of the insurance institution or agent with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the insurance institution or agent;
- The categories of nonpublic personal information that are collected by the insurance institution or agent;
- The policies that the insurance institution or agent maintains to protect the confidentiality and security of nonpublic personal information; and
- The disclosures required of the Fair Credit Reporting Act.

In the case of a policyholder, the **notice required must be provided at least once in any period of 12 consecutive months** during which the policy is in effect.

5. Exceptions

An insurance institution or agent may provide a joint notice from the insurance institution or agent and one or more of its affiliates or other financial institutions, as long as the notice is accurate with respect to the insurance institution or agent and the other institutions. The notice requirements may be satisfied by providing a single notice if two or more applicants or policyholders jointly obtain or apply for an insurance product.

The notices are **not required** to the following:

- Any applicant or policyholder **whose last known address** is deemed invalid, according to the insurer's records; and
- Any policyholder whose policy is lapsed, expired, or otherwise inactive, and the insurance institution has not communicated with the policyholder for a period of **12 consecutive months**, other than annual privacy notices, material required by law or regulation, or promotional materials.

If an agent does not share information with any person other than the agent's principal or its affiliate, and if the principal provides all notices required by the General Statutes, the agent is NOT required to provide the notices.

When an agent discloses a policyholder's personal information (other than medical information) to an insurance institution solely for the purposes of renewal, transfer, replacement, reinstatement, or modification of an existing policy, the agent is not required to provide the required notices.

An insurance institution or agent that does not disclose personal information about an applicant or policyholder under a group or blanket insurance contract, employee benefit plan, or group annuity contract, *may satisfy any notice requirement* that exists with respect to that applicant or policyholder by providing a notice of information practices to the holder of the group or blanket insurance or annuity contract or the employee benefit plan sponsor. If an insurance institution or agent discloses personal information about an applicant or policyholder, it must provide the notice to the applicant or policyholder **at least 30 days** before the information is disclosed.

6. Marketing and Research Surveys

Insurance institutions and agents must clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.

7. Content of Disclosure Authorization Forms

Insurance institutions may only use disclosure authorization forms to obtain personal or privileged information about an individual if the forms meet the following criteria:

- Comply with the provisions of the General Statutes;
- Are dated;
- Specify the types of persons authorized to disclose information about the individual;
- Specify the nature of the information authorized to be disclosed;
- Name the insurance institution or agent to whom the information will be disclosed;
- Specify the purpose for which the information is collected;
- Specify the length of time that the authorization is valid, which can be no longer than the following:
 - In the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:
 - **30 months** from the date the authorization is signed if the application or request involves *life, health, or disability insurance*;
 - **1 year** from the date the authorization is signed if the application or request involves *property or casualty insurance*; or
 - In the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:
 - The term of coverage of the policy if the claim is for a health insurance benefit;
 - The duration of the claim if the claim is not for a health insurance benefit; and
 - Advises the individual or a person authorized to act on behalf of the individual that the individual is entitled to receive a copy of the authorization form.

8. Investigative Consumer Reports

Insurance institutions can prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving the following:

- An application for insurance;
- A policy renewal;
- A policy reinstatement; or
- A change in insurance benefits.

The insurance institution must inform the individual that he/she may request to be interviewed in connection with the preparation of the investigative consumer report and request to receive a copy of the report.

If an investigative consumer report is prepared by an insurance-support organization, the insurance institution or agent requesting the report must inform the insurance-support organization whether a personal interview has been

requested by the individual. The insurance-support organization must comply with any interview requests.

9. Access to Recorded Personal Information

If an individual submits a written request to an insurance institution or agent for access to recorded personal information about the individual, the following must occur within **30 business days** after the date the request is received:

- Inform the individual of the nature and substance of the recorded personal information;
- Permit the individual to see and copy the information, in person or by mail;
- Disclose to the individual the identity of those persons to whom the insurance institution, agent, or insurance-support organization has disclosed such personal information within **2 years** prior to the request. If the identity is not recorded, the names of insurance institutions, agents, insurance-support organizations, and other persons to whom such information is normally disclosed must be provided; and
- Provide the individual with a summary of the procedures by which he/she may request correction, amendment, or deletion of recorded personal information.

Any personal information provided must identify the source of the information (if the source is an institutional source).

Medical record information supplied by a medical care institution or medical professional, as well as the identity of the medical professional or medical-care institution that provided such information, must be supplied either directly to the individual or to a medical professional designated by the individual that is licensed to provide medical care with respect to the condition to which the information relates. If the insurance institution elects to disclose the information to a medical professional designated by the individual, the institution must notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.

A reasonable fee may be charged to individuals that will cover the costs involved in providing a copy of recorded personal information to them.

The obligations imposed upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request, an insurance institution, agent, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

Information disclosure rights do not include information that relates to a claim or civil or criminal proceeding involving them.

10. Reasons for Adverse Underwriting Decisions

In the event of an adverse underwriting decision, the insurance institution or agent responsible for the decision must give a written notice that provides the applicant with the specific reasons for the adverse underwriting decision. The

applicant must also receive a summary of his/her rights established under the General Statutes.

An *adverse underwriting decision* is one where:

- Coverage is declined;
- Coverage is terminated; or
- Application is not made for a requested insurance institution.

Upon receipt of a written request **within 90 business days** from the date of the mailing of notice, the insurance institution or agent must furnish to the person, **within 21 business days** from the date of receipt of the written request, the following:

- The specific reason or reasons for the adverse underwriting decision, in writing;
- The specific items of personal and privileged information that support those reasons;
- That the insurance institution or agent cannot be required to furnish specific items of privileged information if it has a reasonable suspicion that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure;
- Specific items of medical-record information supplied by a medical-care institution or medical professional must be disclosed either directly to the individual about whom the information relates or to the medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or agent prefers; and
- The names and addresses of the institutional sources that supplied the specific items of information; however, the identity of any medical professional or medical-care institution must be disclosed either directly to the individual or to the designated medical professional (whichever the insurance institution or agent prefers).

When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights may be given orally.

Insurance companies or agents may not seek information about an individual applicant or insured in connection with an insurance transaction concerning:

- Any previous adverse underwriting decision experienced by the individual; or
- Any previous insurance coverage obtained by an individual through a residual market mechanism.

11. Disclosure, Limitations and Conditions

In general, an insurance institution, agent, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction. Under certain circumstances, this information may be disclosed. *For example*, information may be shared with the written authorization of the applicable individual.

12. Limits on Sharing Account Number Information in Marketing Practices

General Prohibition on Disclosure of Account Numbers — An insurance institution, insurance agent, or insurance-support organization must not disclose, other than to a consumer reporting agency, an account number or similar form of access

number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

Definitions:

Account number means an account number, or similar form of access number or access code, but does not include a number or code in an encrypted form, as long as the insurance institution, insurance agent, or insurance-support organization does not provide the recipient with a means to decode the number or code.

Transaction account means an account other than a deposit account or credit card account. A transaction account does NOT include an account to which third parties cannot initiate charges.

Exceptions – The general prohibition provisions on disclosure of account numbers does NOT apply if an insurance institution, insurance agent, or insurance-support organization discloses an account number or similar form of access number or access code:

- To the insurance institution's, insurance agent's, or insurance-support organization's agent or service provider **solely in order to perform marketing** for the insurance institution's, insurance agent's, or insurance-support organization's own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; and
- To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

13. Individual Remedies

If an insurance institution or its agents fail to comply with regulations regarding consumer information privacy and consumer rights, any person whose rights are violated may apply to the superior court in the county in which such person resides for appropriate equitable relief.

An insurance institution, agent, or insurance-support organization that discloses information in violation will be liable for damages sustained by the individual to whom the information relates. No individual, however, will be entitled to a monetary award that exceeds the actual damages sustained by the individual as a result of a violation. The court may award the cost of the action and reasonable attorney's fees to the prevailing party.

An action under this section must be brought **within 2 years** from the date the alleged violation is or should have been discovered.

If any insurance institution, agent, or insurance-support organization fails to comply with respect to the rights granted under above sections detailing access to provide information, procedure for correction to personal information and reasons for adverse underwriting decisions, any person whose rights are violated may apply to the superior court in the county in which such person resides for appropriate equitable relief.

14. Immunity

A person cannot be charged with defamation, invasion of privacy, or negligence as a result of disclosing personal or privileged information or for furnishing personal or privileged information to an insurance institution, agent, or insurance-support organization. No immunity is provided, however, for furnishing false information with malice or willful intent to injure any person.

15. Obtaining Information under False Pretenses

Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent, or insurance-support organization under false pretenses will, upon conviction, be guilty of a **Class 1 misdemeanor**.

16. Penalties

Violations of the Commissioner's cease and desist order pertaining to **consumer information privacy** will result in the following penalties:

- A monetary fine of not more than \$10,000 for each violation;
- A monetary fine of not more than \$50,000 if the court finds that violations have occurred with such frequency as to constitute a general business practice; or
- Suspension or revocation of an insurance institution's or agent's license.

The clear proceeds of any civil penalties levied pursuant to this section will be remitted to the Civil Penalty and Forfeiture Fund.

E. Unfair Trade Practices

Insurers and insurance producers may not engage in any trade practice that is defined as, or determined to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

It is considered an unfair trade practice to knowingly engage in an unfair method of competition with enough frequency that the commission of unfair marketing practices indicates a general business practice.

If, after a hearing, the Department determines that a producer or an insurer has committed an unfair trade or competition practice, the Department may issue an order requiring the person to cease and desist from engaging in the method of competition, act, or practice, and/or impose penalties for violation of insurance laws.

1. Misrepresentation

It is illegal to issue, publish, or circulate any illustration or sales material that is false, misleading, or deceptive as to policy benefits or terms, or the payment of dividends. This also refers to verbal statements. Committing this illegal act is called **misrepresentation**.

2. False Advertising

Advertising covers a wide scope of communication, from publishing an ad in a newspaper or magazine, to broadcasting a commercial on television or the Internet. Advertisements cannot include any untrue, deceptive, or misleading statements that apply to the business of insurance or anyone who conducts it. The violation of this rule is called **false advertising**.

It is prohibited to advertise or circulate any materials that are untrue, deceptive, or misleading. False or deceptive advertising specifically includes **misrepresenting** any of the following:

- Terms, benefits, conditions, or advantages of any insurance policy;
- Any dividends to be received from the policy, or previously paid out;
- Financial condition of any person or the insurance company; or
- The true purpose of an assignment or loan against a policy.

Representing an insurance policy as a share of stock, or using names or titles that may misrepresent the true nature of a policy also will be considered false advertising. In addition, a person or an entity cannot use a name that deceptively suggests it is an insurer.

3. False Financial Statements

False financial statements are those that are intended to deceive public officials or the general public about the financial condition of an insurer. This often occurs when an important fact about the financial status of an insurer is deliberately withheld in order to present the company in a more favorable light.

Any person who willfully misstates financial or other information under oath or as a signed statement can be charged with a Class I **felony**. The entity on whose behalf the person made the statement can be subject to a fine imposed by the court for an amount between \$2,000 and \$10,000.

4. Rebating

Rebating is defined as any inducement offered to the insured in the sale of insurance products that is not specified in the policy. Both the offer and acceptance of a rebate are illegal. Rebates may include, but are not limited to, the following:

- Rebates of premiums payable on the policy;
- Special favors or services;
- Advantages in the dividends or other benefits; and
- Stocks, bonds, securities, and their dividends or profits.

Rebates and Premiums

Rebates and Charges of Excess Premium

Insurers, agents, brokers or limited representatives cannot knowingly charge any excess premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner.

Likewise, offers to pay or give anything as an inducement to insurance or after insurance has been effected are prohibited. This includes rebates of premium,

premium reductions, and discounts. Monetary consideration for processing applications or services is not allowed.

This restriction does not apply to the collection and charging of fees otherwise provided by law.

Rebates of Premium on Credit Insurance

It is unlawful for any insurance carrier, officer, agent, or representative of an insurance company writing credit life and credit accident and health insurance or hospitalization and disability insurance in connection with loans, to permit any agent or representative to retain any portion of funds received for the payment of losses or to pay, give, or offer to pay any rebate, discount, abatement, credit, or reduction of the premium to any loan agency, insurance agency or broker, or to any creditor of the debtor on whose account the insurance was issued, or to any person, firm or corporation which received a commission or fee in connection with the issuance of such insurance.

This does NOT prohibit the payment of commissions to a licensed insurance agent or agency or limited representative on the sale of a policy of credit life and credit accident and health insurance, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans.

It is unlawful for any agent, agency, broker, limited representative, insured, loan agency or broker, or employee of any loan agency or broker to receive any rebate, discount, abatement, credit, or reduction of the premium

Payment of Premiums to Agent

Any agent, broker, or limited representative who acts for a person other than himself while negotiating a contract of insurance, for the purpose of receiving the premium, is deemed to be the company's agent. Any agent, broker, or limited representative knowingly procuring payment by fraudulent representations will be guilty of a Class 1 misdemeanor.

5. Twisting

Twisting is a misrepresentation, or incomplete or fraudulent comparison of insurance policies that persuades an insured/owner, to their detriment, to cancel, lapse, switch policies, or take out a policy **with another insurer**. Twisting is prohibited.

6. Defamation

Defamation occurs when an oral or written statement is made that is intended to injure a person engaged in the insurance business. This also applies to statements that are **maliciously critical** of the *financial condition* of any person or company.

7. Boycott, Coercion & Intimidation

It is illegal to be involved in any activity of **boycott, coercion, or intimidation** that is intended to restrict fair trade or to create a monopoly. This would include unfair

behavior that influences not only clients, but competing agents and brokers.

Coercion is to require, as a condition to a loan, that the applicant purchase insurance from a specific insurer.

8. Unfair Discrimination

Discrimination in rates, premiums, or policy benefits for persons within the **same class** or with the same life expectancy is illegal. No discrimination may be made on the basis of an individual's marital status, race, national origin, gender identity, sexual orientation, creed, or ancestry unless the distinction is made for a business purpose or required by law.

Insurers cannot base any standard or rating plan for private passenger automobiles or motorcycles upon the age or sex of the persons insured.

Insurers cannot refuse to insure or continue to insure an individual, limit the amount, extent, or kind of coverage available to an individual, or charge an individual a different rate for the same coverage solely because of **blindness** or **partial blindness** or **deafness** or **partial deafness**. Insurers are also not allowed to discriminate in this manner because of the **insured's race, color, national origin, or ethnic origin**.

Companies transacting business in North Carolina **cannot discriminate in favor of any person**. Discrimination is forbidden among individuals of the same class as far as premiums and rates charged for an insurance policy.

9. False Statements in Applications for Insurance

Any agent, examining physician, applicant, or other person who knowingly or willfully makes any false or fraudulent statement or representation in an application for insurance or makes any fraudulent statement for the purpose of obtaining a fee, commission, money, or benefit from any insurance company in this state, will be guilty of a Class 1 **misdemeanor**.

10. Embezzlement by Agents or Brokers

If any insurance agent, broker, or administrator embezzles or fraudulently uses or withdraws any money received as a result of acting as an agent, broker, or administrator, he/she can be charged with a **felony**. If the value of the consideration is \$100,000 or more, the violation is a Class C felony. If the value of the consideration is less than \$100,000, the violation is a Class H felony.

11. Agents Signing Certain Blank Policies

Any agent or limited representative who signs any blank contract or policy of insurance is guilty of a Class 3 **misdemeanor** and, upon conviction, will be punished by a fine in an amount between \$1,000 and \$5,000. There is one exception to this rule. Transportation ticket policies of accident insurance and baggage insurance policies may be countersigned when blank for issuance only through coin-operated machines.

12. False Pretenses and Cheats

Any person who knowingly, by means of any kind of false pretense, obtains or attempts to obtain from any person any money, goods, property, services, or other thing of value with the intent to cheat or defraud any person, may be found guilty of a **felony**. If the value of the money, goods, property, services, or other thing of value is more than \$100,000, the violation is a **Class C felony**. If the value is less than \$100,000, the violation is a **Class H felony**. Evidence of nonfulfillment of a contract obligation standing alone does NOT establish the essential element of intent to defraud.

In addition to the Unfair Trade Practices defined in the NAIC Model Law, North Carolina law defines the following as unfair trade practices:

- Making, publishing, disseminating, circulating, or placing before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of insurance business, which is untrue, deceptive or misleading;
- Soliciting, advertising, or entering into insurance contracts with foreign states (and any other jurisdiction) in which the domestic insurer is not licensed.

All advertisements, regardless of who wrote, created, or presented them, are the **responsibility of the insurer** using them.

The Commissioner may require some insurers to file with the North Carolina Department of Insurance all advertising material (or any part of advertising material) for review prior to its use. All advertising material subject to review must be filed **30 days prior** to its intended use.

F. Life And Health Insurance Guaranty Association

Guaranty Associations are formed to protect policyowners, insureds, beneficiaries, and anyone entitled to payment under an insurance policy from the incompetence and insolvency of insurers. The association will pay covered claims up to certain limits set by state law. The Association is funded by its members through assessment. All authorized insurers, which are required to be the members of the Association, contribute to a fund to provide for the payment of claims for insolvent insurers.

The North Carolina Life and Health Insurance Guaranty Association is composed of all insurers who lawfully do business in the state. It assesses members according to the lines of business it transacts and maintains **2 separate accounts**:

1. The life insurance and annuities account; and
2. The health insurance account.

The Association is under the immediate supervision of the Commissioner.

The Association's liability is generally limited to those of the impaired insurance company. The liability of the Association may not exceed the lesser of the contractual obligations for which the insurance company is liable, or the following amount with respect to any one life, regardless of the number of policies or contracts:

- With respect to any **one individual**, regardless of the number of policies, **\$300,000** or all benefits, including cash values;
- With respect to **each individual** participating in a governmental retirement plan established by the Internal Revenue Code covered by an unallocated annuity contract, or the beneficiaries of each individual if deceased, in the aggregate, **\$300,000** in present value annuity benefits, including net cash surrender and net cash withdrawal values;
- With respect to **health insurance benefits** for any one individual, regardless of number of policies,
 - **\$300,000** for coverages not defined as basic hospital, medical, and surgical insurance or major medical insurance, including disability insurance and long-term care insurance; or
 - **\$500,000** for basic hospital, medical, and surgical insurance or major medical insurance;
- With respect to any one payee (or beneficiaries of one payee if the payee is deceased) of a **structured settlement annuity**, **\$1 million** for all benefits, including cash values;
- With respect to any **one contract holder** covered by any unallocated annuity contract **\$5,000,000** in benefits, regardless of the number of contracts held by that contract holder.

In no event is the Association liable to expend more than \$300,000 total with respect to any one individual under this section, except with respect to benefits for basic hospital, medical, and surgical and major medical insurance, in which case the limit is \$500,000 with respect to any one individual.

It is an **unfair trade practice** to make any statement that an insurer's policies are guaranteed by the existence of the Life and Health Guaranty Association.

G. General Regulations For Insurance

In North Carolina, the legislature has made and implemented state statutes which, collectively, are known as the **Insurance Code**. These statutes, rules, and regulations govern insurance companies, insurance transactions, and insurance agents in their conduct of the business of insurance.

1. Statements in Application Not Warranties

All statements or descriptions in any application for a policy of insurance, or in the policy itself, are representations and not warranties. A representation, unless material or fraudulent, will NOT prevent a recovery on the policy.

2. Addition or Coinsurance Clause

No insurance company or agent may issue any policy or contract of property insurance that contains any clause or provision requiring the insured to take or maintain a larger amount of insurance than that expressed in the policy.

In addition, no insurer or agent can require an insured to be liable as a coinsurer with the company issuing the policy for any part of the loss or damage to the property. When a coinsurance clause or provision is attached to a policy, it must state on the declarations page the words **coinsurance contract**. If there is a difference in the rate for the insurance with and without the coinsurance clause, the rates for each must be furnished to the insured upon request.

3. Discriminatory Practices Prohibited

Insurers cannot base any standard or rating plan for private passenger automobiles or motorcycles upon the age or sex of the persons insured.

Insurers cannot refuse to insure or continue to insure an individual, limit the amount, extent, or kind of coverage available to an individual, or charge an individual a different rate for the same coverage solely because of **blindness** or **partial blindness** or **deafness** or **partial deafness**. Insurers are also not allowed to discriminate in this manner because of the **insured's race, color, national origin, or ethnic origin**.

Companies transacting business in North Carolina **cannot discriminate in favor of any person**. Discrimination is forbidden among individuals of the same class as far as premiums and rates charged for an insurance policy.

4. Meaning of Terms "Accident", "Accidental Injury", and "Accidental Means"

Accident, accidental injury, and accidental means are defined to imply "result" language and do not include words that establish an accidental means test. The term "accident," therefore, means a sudden, unplanned and unexpected event that is not under the control of the insured and results in injury or damage.

5. Proof of Loss Forms Required

When any company under any insurance policy requires a written proof of loss after notice of the loss has been given by the insured or beneficiary, the company must furnish a blank form to be used for that purpose. If these forms are not so furnished within **15 days** after the receipt of the notice, the claimant can be deemed to have complied with the proof of loss requirements.

6. Lender Activities with Customers Prohibited

A lender cannot require clients to purchase insurance from the lender or its affiliates as a condition of making, renewing, or refinancing any loan or establishing any of the terms or conditions of a loan.

7. Temporary Contracts Permitted

A lender who makes or services real estate mortgage or deed of trust loans on one to four family residences must accept valid temporary written contracts of insurance as evidence of insurance.

A lender can refuse to accept a binder or disapprove an insurer or agent. A lender does not need to accept a binder unless the binder includes the following:

- The name and address of the insured;
- The name and address of the mortgagee;
- A description of the insured collateral;
- A provision that it may NOT be cancelled within a term of the binder except upon **10 days** written notice to the mortgagee;
- The amount of insurance bound;
- Is accompanied by a paid receipt for **1 year's** premium, except in the case of the renewal of a policy subsequent to the closing of a loan; and
- Includes an undertaking of agent to use his best efforts to have the insurance company issue a policy.

The Department may require binders to contain any additional information to permit the binders to comply with the reasonable requirements of Fannie Mae, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation for purchase of mortgage loans.

8. Solicitation, Negotiation or Payment of Premiums

An insurer, agent, or broker may accept payment of an insurance premium by credit card if the insurer meets the following conditions:

- Makes payment by credit card available to all existing and prospective insureds and does not limit the use of credit card payments to certain persons; and
- Pays the fees charged by the credit card company for the payment of premiums by credit card.

9. By the Numbers - Summary Chart

Numbers, Dollars, Days, and Dates

In order to perform your best on the state regulations portion of the exam, make sure you memorize these numbers and their definitions.

Department of Insurance Regulations:

4 years Commissioner's term of office

5 years Insurers and agents must maintain a log of complaints

30 days To apply for a hearing, after a license is denied

Licensing and Appointment Requirements:

18 Age to apply for license

20 hours Required prelicensing education for agent's license

10 hours Required prelicensing education for Medicare supplement and long-term care license

180 days Term of temporary license

15 days To submit appointment notification to the Commissioner

30 days For insurer to notify the Commissioner of agent appointment termination

15 days For insurer to notify the agent of appointment termination

Miscellaneous Producer Regulations:

15 days For insurer to supply proof of loss forms after receiving notice of loss

30 days To supply access to recorded personal information, after written request

10 days For a licensee to notify the Commissioner of any change of address or e-mail address

10 days For a licensee to notify the Commissioner of any criminal convictions

24 hours CE required for all licenses, every 2 years (based on birth month and year)

3 hours Ethics CE requirement (each compliance period)

3 hours Flood insurance CE requirement (every other compliance period) - for Property, Personal Lines, and Adjusters

Important Dollar Amounts:

\$100-\$1,000 Initial fine for violating the Insurance Code

\$1,000-\$5,000 Fine for willfully violating a cease and desist order

\$10,000-\$50,000 Fine for violating the Insurance Code following the issuance of a cease and desist order

\$15,000	Broker's bond
\$2,000	Fine for willfully making false statements, up to \$10,000
\$50	License registration fee
\$1,000	Fine for soliciting membership in an unlawful fraternal benefit society, up to \$5,000
\$300,000	The maximum amount of the Association's liability to one individual (unless basic hospital, medical, and surgical insurance or major medical insurance)
\$500,000	The maximum amount of the Association's liability to one individual for basic hospital, medical, and surgical insurance or major medical insurance
\$5,000,000	The maximum amount of the Association's liability to one contract holder covered by an unallocated annuity
\$50	Administrative fee for failing to notify the Commissioner of change in residential or e-mail address within 10 business days

H. Life Insurance Regulations

1. Solicitation

Life insurance solicitation is regulated for the following purposes:

- To require insurers to deliver information to purchasers of life insurance (including prearrangement funeral policies), which will improve the ability of applicants to select the most appropriate plan of coverage for their needs;
- To improve the buyer's understanding of the basic features of a policy that has been purchased or is under consideration for purchase;
- To improve the ability of the buyer to evaluate the relative costs of similar plans of insurance.

The insurer must provide a **buyer's guide** and a **policy summary** to all prospective purchasers before accepting the initial premium deposit.

A **buyer's guide** provides basic, **generic** information about life insurance policies that contains, and is limited to, language approved by the Department of Insurance.

A **policy summary** is a written statement describing the **features and elements** of the policy being issued. It must include the name and address of the agent, the full name and home office or administrative office address of the insurer, and the generic name of the basic policy and each rider.

If the policy for which an application is made contains an unconditional refund provision of at least 10 days (free-look period), the buyer's guide and policy summary must be delivered with the policy or prior to delivery of the policy. The insurer must provide a buyer's guide and a policy summary to any prospective purchaser upon request.

Prior to accepting the applicant's initial premium for a prearrangement **funeral or burial policy**, all of the following must be disclosed to the purchaser:

- The nature of the relationship among the insurance agent, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;
- The relationship of the prearrangement insurance policy to funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
- All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the policy proceeds and the amount actually needed to fund the prearrangement; and

- Any penalties or restrictions.

The following are other general rules mandated by the law:

- Each insurer must maintain a complete file containing one copy of each authorized document and form used in life insurance solicitations for **3 years** following the date of its last authorized use.
- An agent must inform the prospective purchaser that he/she is acting as a life insurance agent and provide the full name of the insurance company that he/she is representing.
- Terms such as *financial planner, investment advisor, financial consultant, or financial counseling* may not be used.
- Failing to provide or deliver a Buyer's Guide or a Policy Summary constitutes an omission, which misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

2. Replacement

Replacement means any transaction in which new life insurance or a new annuity is purchased and, as a result, the existing life insurance or annuity has been or will be any of the following:

- Lapsed, forfeited, surrendered, or otherwise terminated;
- Reissued with any reduction in cash value;
- Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- Amended so as to affect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid; or
- Used in a financed purchase.

Replacing insurer is the company that issues the new policy.

Existing insurer is the company whose policy is being replaced.

Duties of the replacing producer:

- Present to the applicant a **Notice Regarding Replacement** that is signed by both the applicant and the producer. A copy must be left with the applicant;
- Obtain a list of all existing life insurance and/or annuity policies to be replaced including policy numbers and the names of all companies being replaced;
- Leave the applicant with the original or a copy of written or printed communications used for presentation to the applicant; and
- Submit to the replacing insurance company a copy of the replacement notice with the application.

Each producer who initiates the application must submit the following to the insurance company with or as part of each application:

- A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and
- A signed statement as to whether the producer knows replacement is or may be involved in the transaction.

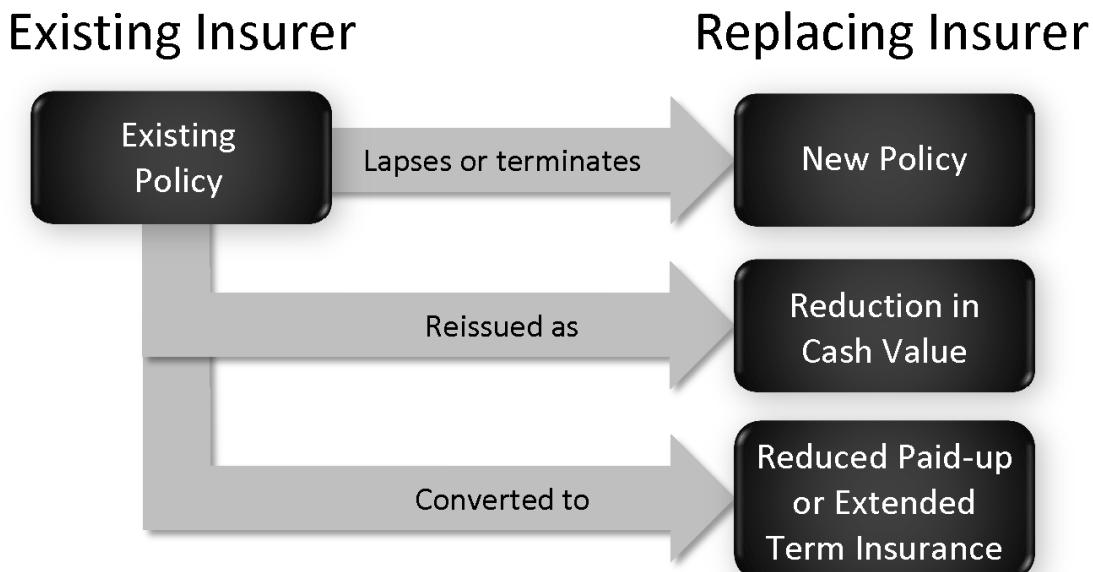
Duties of the replacing insurance company:

- Require from the producer a list of the applicant's life insurance or annuity contracts to be replaced and a copy of the replacement notice provided to the applicant; and

- Send each existing insurance company a written communication advising of the proposed replacement within a specified period of time of the date that the application is received in the replacing insurance company's home or regional office. A policy summary or ledger statement containing policy data on the proposed life insurance or annuity must be included.

In addition, the replacing insurer must provide to the policyowner notice **of the right to return** the policy or contract within **30 days** of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges.

Policy Replacement



Replacement rules **do not apply** to transactions involving the following:

- Credit life insurance;
- Group life insurance or group annuities when there is no direct solicitation by a producer;
- Group life insurance or group annuities used to fund prearranged funeral contracts;
- An application to the existing insurer that issued the existing policy when a contractual change or a conversion privilege is being exercised, or when the existing policy is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner;
- Policies that replace life insurance under a binding or conditional receipt by the same company;
- Policies and contracts used to fund employee pension or welfare plans covered by ERISA;
- Existing life insurance policies that are nonconvertible term with 5 years or less remaining on the policy term;
- Immediate annuities purchased with proceeds from an existing contract;
- Structured settlements.

Replacement rules apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and when the insurer has been notified that plan participants may choose from among two or more insurers and there is a

direct solicitation of an individual employee by a producer for the purchase of a contract or policy.

Conservation

Conservation means any attempt by the existing insurer or its producers, or by a broker to dissuade a current policyowner from the replacement of existing life insurance or annuity. This does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

3. Viaticals

Viatical Settlements allow someone living with a life-threatening condition to sell their existing life insurance policy and use the proceeds when they are most needed, before their death. Viators (or the owners of the original policy) usually receive a **percentage** of the policy's face value from a third party who purchases the policy. The new owner continues to maintain premium payments and will eventually collect the entire death benefit.

Viatical settlement contract means a written agreement entered into between a viatical settlement provider and a viator. The viatical settlement contract includes an **agreement to transfer ownership or change the beneficiary designation of a life insurance policy** at a later date, regardless of the date that compensation is paid to the viator. The agreement must establish the terms under which the viatical settlement provider will pay compensation in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership to the viatical settlement provider.

Definitions

Chronically III

Chronically ill means being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence, or conditions requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

Terminally III

Terminally ill means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

Viator

Viator means the owner of a life insurance policy (or a certificate holder under a group policy) who enters or seeks to enter into a viatical settlement contract. A viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except as specifically addressed.

Viator does **not** include

- A licensee under the Viatical Settlements Act, including a life insurance producer acting as a viatical settlement broker;
- An accredited investor or qualified institutional buyer;
- A financing entity;
- A special purpose entity; or
- A related provider trust.

Viatical Settlement Broker

Viatical settlement broker means a person who on behalf of a viator and for a fee, commission, or other valuable consideration, negotiates viatical settlement contracts between a viator and one or more viatical settlement providers.

Viatical Settlement Provider

Viatical settlement provider means a person, other than a viator, that enters into or effectuates (makes effective) a viatical settlement contract with a viator resident in this state.

Viatical settlement provider **does not** include:

- A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
- The issuer of a life insurance policy providing accelerated benefits under and pursuant to the contract;
- An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- A financing entity;
- A special purpose entity;
- A related provider trust;
- A viatical settlement purchaser; or
- An accredited investor or qualified institutional buyer who purchases a viaticated policy from a viatical settlement provider.

Viatical Settlement Contract

Viatical settlement contract means a written agreement entered into between a viatical settlement provider and a viator. The viatical settlement contract includes an **agreement to transfer ownership or change the beneficiary designation of a life insurance policy** at a later date, regardless of the date that compensation is paid to the viator. The agreement must establish the terms under which the viatical settlement provider will pay compensation in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership to the viatical settlement provider.

State Regulations

Any person licensed to transact viatical settlements must retain copies of all records related to viatical settlements for **5 years**.

A person in the business of viatical settlements may not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

Viatical settlement contracts and applications for viatical settlements must contain the following, or a substantially similar, statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract or a viatical settlement purchase agreement is guilty of a felony and may be subject to fines and confinement in prison."

Any person who commits a fraudulent viatical settlement act is guilty of a **Class H felony**.

4. Life Policy Provisions

You have already learned about life insurance policy provisions and options. However, there are some state-specific requirements regarding mandatory policy provisions that you must know about. All life insurance policies issued in North Carolina must include the following provisions:

- **Grace period:** The insured is entitled to a grace period of **31 days** for the payment of any premium due (except for the first payment), during which time the death benefit coverage will continue in force. In other words, a policyowner has 31 days to pay the premium after it is due before the policy lapses and coverage stops. If a claim arises under the policy during the grace period, the amount of any premium due or overdue may be deducted from any amount payable under the policy in settlement.
- **Incontestability:** The validity of the policy cannot be contested once it has been in force for **2 years** after its date of issue. This does not apply to instances in which the premium is not paid.
- **Misstatement of age or gender:** An equitable adjustment of premiums or benefits (or both) must be made if the age or gender of the person insured has been misstated.
- **Reinstatement:** Unless the policy is surrendered for its cash value or its cash surrender value has been exhausted, the policy will be reinstated at any time within **5 years** after the date of premium default upon presentation of the following:
 - A written application;
 - Evidence of insurability;
 - The payment of all overdue premiums; and
 - The payment of any other indebtedness to the insurer upon the policy.A reinstated policy may be contested due to fraud or misrepresentation of facts material to the reinstatement but only for 2 years.
- **Rights of beneficiaries:** The lawful beneficiary of an insurance policy is entitled to its proceeds against the creditors and representatives of the policyholder. A person may insure his/her own life for the sole use and benefit of his/her spouse or children, and when the insured dies, the proceeds from the insurance are paid to or for the benefit of those beneficiaries and are free from all claims of creditors of the insured (or the insured's estate).
- **Interest payment of death benefits:** Insurers are required to pay the death benefit within **30 days** after receipt of satisfactory proof of loss because of death. After the 30-day period, insurers must pay interest at a rate at least equal the current rate of interest on death proceeds left on deposit with the insurer calculated from the date of the insured's death.

- **Sickle cell or hemoglobin trait:** Insurers cannot refuse to issue a life policy or charge a higher premium based solely on the fact that the insured has a sickle cell trait or a hemoglobin C trait.
- **Suicide:** An insurer may not limit payment of benefits for a period lasting more than 2 years after the date of issue of the policy because of suicide and must provide for at least the return of premium paid on the policy if suicide occurs during the 2-year period.

In this state, a minor has a right to enter into an insurance or annuity contract at the **age of 15** with any life insurance company authorized to do business in North Carolina. Minors have the same rights and privileges under the policy as adults.

5. Other General Regulations

All life insurance corporations or associations doing business in this state must produce contracts that state the amount of benefits payable, the manner of payment, the consideration, and any other provisions required by the Commissioner. Some other areas of the business of insurance that are defined and regulated by statutes include the following:

- **Industrial life insurance** — insurance under which the premiums are payable monthly or more often. The face amount of insurance stated in the policy may not exceed \$1,000 and the words "*Industrial Policy*" must be printed on the policy as part of the descriptive matter.
- **Tie-in sales prohibited** — no life insurance company can deliver any agreement or plan with an endowment or annuity contract which provides for the sale, solicitation, or delivery of any stock in the company issuing the policy or in any other insurance company or other corporation. This includes benefit certificates, securities, any special advisory board contracts, other contracts or resolutions of any kind promising returns and profits, or dividends equivalent to stock dividends as an inducement or in connection with the insurance.
- **Credit life insurance** — insurance upon the life of a debtor who may be indebted to any person, firm, or corporation extending credit to the debtor. Credit life insurance may include the granting of additional benefits in the event of total and permanent disability of the debtor.
- **Any type of survivorship fund in life insurance contract prohibited** — no life insurance company will deliver as a part of or in combination with any insurance, endowments or annuity contracts, any agreement or plan, additional to the rights, dividends, and benefits arising out of any such insurance, endowment or annuity contract, which provides for the accumulation of profits over a period of years and for payment of all or part of such accumulated profits only to members or policyholders of a designated group or class who continue as members or policyholders until the end of a specified period of years. Nor will any such company deliver any individual life insurance policy which provides that on the death of anyone not specifically named therein, the owner or beneficiary of the policy will receive the payment or granting of anything of value.

All companies, agents, or brokers doing any kind of insurance business in North Carolina must make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from these records must be furnished to the Commissioner on demand, and the original books of records must be open to the inspection of the Commissioner when demanded.

I. Educational Highlights

Take another look at the topics discussed in this chapter. Try to answer the following questions on your own and then verify the correct answers:

1. Who is the head of the Insurance Department, and what specific duties does this person hold?

The chief officer of the Insurance Department is called the Commissioner of Insurance. The Commissioner is responsible for several duties involving the transaction of insurance in the state, including enforcing and carrying out the provisions of the insurance code, adopting rules to enforce those provisions, examining financial reports, and reporting insurance law violations to the Attorney General.

2. Describe the differences between an agent and a broker.

Agents are licensed to solicit applications for, or to negotiate a policy of, insurance. Agents represent insurers. Brokers, on the other hand, are licensed agents who procure insurance for people other than themselves through a duly authorized agent of an insurer. Brokers represent the insured or their beneficiaries.

3. List different situations which could result in producer license suspension.

Applicant lied on his or her license application; licensee violated any insurance law; licensee illegally withheld money received in the course of business; used fraudulent or dishonest practices in the course of transacting business; forged a person's name on an application for insurance.

4. Who can receive a temporary agent's license? How long does this license last?

The spouse or personal representative of a licensed agent who has died or has become mentally or physically disabled; an employee of a licensed agent who has died or become disabled; or to the designee of an agent entering active military service. Temporary licenses last for up to 180 days.

5. How many hours will of continuing education will you need to complete? How often?

Licensed persons are required to complete 24 credit hours of continuing education every 2 years.

6. Under what circumstances would it be legal to publish false information if it benefits the agency? What term refers to this practice?

It is illegal to issue, publish or circulate any illustration or sales material that is false. Committing this illegal act is called misrepresentation.

7. What is defamation?

Defamation occurs when an oral or written statement is made that is intended to injure a person engaged in the insurance business.

8. Under what circumstances (if any) is rebating legal?

Both the offer and acceptance of a rebate are illegal.

9. Define an unfair trade practice of twisting.

Twisting is a misrepresentation that persuades an insured/owner, to his or her detriment, to cancel, lapse, or switch policies from one to another.

10. When does the grace period go into effect? How long does it last?

Grace periods go into effect the day a premium payment was due. Grace periods last for 31 days.

11. What statements must the replacing insurer submit with each application to the replacing insurer?

A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction, and a signed statement as to whether the producer knows replacement is or may be involved in the transaction.

12. What are the four steps a producer must follow when replacing an existing policy?

(1) Give applicant a Notice Regarding Replacement; (2) Obtain a list of all existing life insurance policies to be replaced; (3) Give the applicant the original or a copy of written or printed communications used for presentation to the applicant; and (4) Submit to the replacing insurance company, with the application, a copy of the replacement notice.