Insurance Agents and Brokers

An **agent** is a person who represents a **principal**, who can be another person or a company, and act in the principal's behalf. An **insurance agent** represents the insurance company and an **insurance broker** represents the insurance applicant—both must be licensed by the state in which they conduct business.

The main duty of agents and brokers is to sell insurance. They also explain the benefits of insurance, and give their insured information as to what is covered and what isn't. They may also provide service after a loss, informing the insured what steps need to be taken to have the claim paid.

The insurance company is responsible for the acts of its agents, and it can be assumed by the insurance applicant that any information or payment of money to the agent will be received by the insurance company —not necessarily so for the broker, because the broker represents the insurance client, not the company.

Licensing Requirements

Each state has its own licensing requirements for agents and brokers, but the **Graham-Leach-Bliley Act** (**GLB**) required more uniform laws so that agents and brokers can work in different states. General requirements include being at least 18 years old, no felony convictions, and passing an insurance examination required by state law. Some states also require continuing education courses to maintain the license. In addition, any life insurance agents who sell variable annuities or variable life insurance must also be licensed by the Securities and Exchange Commission, because these products involve investments of securities.

Fundamentals of Agency Law

There are several general principles to understand in agency law.

There is no presumption of an agency relationship. If someone says that they are an agent of an insurance company, but there is no other evidence to support it, and it later turns out that he was not an agent of the insurance company, then the company will not be liable or bound by the actions of the person claiming to be an agent.

If, however, the agent has a place of business using the insurance company's name, and other materials from the company, then the insurance applicant can accept that the agent actually does represent the company, since the agent has **apparent authority** to represent the company. Indications of apparent authority include activities that agent and principal have done customarily, but have not included explicitly or implicitly in the agency agreement. If a client perceives the agent to have apparent authority to act in the company's behalf and relies on it, then the insurance company may be bound by the agent's action, even if the agent's action was not granted by the insurer. However, for the company to be so bound, the client must have exercised due diligence. Are the written materials provided by the insurance company? Is the action a reasonable one for the agent to do? Is there anything in the application or other written materials that would indicate otherwise? For instance, if the agent collects the premium, but the insurance application states that the premium should only be sent to the company, then the company may later deny a claim if it was not sent the premium, and the client will not be able to hold the company liable based on the agent's action, because it contradicted the application.

However, if an agent does act outside the scope of his authority, the insurance company may, nonetheless, **ratify** the agreement or actions.

If an agent represents a company, then the agent must have the authority to do certain things in furthering the principal's interest. An **agency agreement** binds the principal and agent, and is the source of some of the agent's authority. **Express powers** are listed explicitly in the agency agreement, and will generally include not only what the agent can do, but what he cannot do, in representing the principal.

Implied powers (aka **incidental authority**) are those powers implied by the agent's express powers that allow the agent to fulfill the requirements of the agency agreement. Thus, if a life insurance agent has the authority to deliver the policy, then she would also have the authority to collect the 1st premium, since this is the general procedure if the applicant did not previously pay the premium.

Waiver and Estoppel

The rights of the insurance company may be modified by waiver and estoppel. A **waiver** is the voluntary relinquishment of a legal right. For instance, if the company issues a policy to an insured whose application had incomplete information, then the company relinquishes the right to deny coverage for a loss that the company would have denied if the information had been complete.

Estoppel is the prevention of the exercise of one's rights because of inconsistent acts or statements that caused someone else to rely on those acts or statements to their detriment. Estoppel differs from a waiver in that the exercise of the right is prevented involuntarily by law because of a previous act or statement by the person or company seeking to exercise it.

So if an insurance agent tells a client that he can mail the premium later than the due date, the insurance company cannot deny payment of a claim for a loss that occurs between the due date and the receipt of the premium, since the agent, who represents the insurance company, said that it could be mailed late.

Insurance Agents

Insurance agents represent 1 or more companies, and so they are restricted to selling policies to particular people and for particular risks that the companies are willing to cover. If an insurance applicant has a particular need, a broker would probably be more appropriate.

Since insurance agents represent the company, anything communicated or given to the agent is legally considered to have been given to the company. If the agent fails to relay material information or the premium to the company, the company cannot later deny payment of a claim because of the failure of the agent to do his duty.

General agents, common in property insurance, have the authority to bind the insurance company, and, thus, can issue a policy immediately as a binder. A **binder** is evidence of insurance until the policy is actually issued.

Soliciting agents (aka **special agents**), common in life insurance, solicit business for the insurance company, but do not have the legal authority to bind the company to a contract; the insurance company must approve of the application before the insurance becomes effective.

Insurance Brokers

Insurance brokers represent the applicant, and help the applicant to find the right insurance company at the best price. Businesses use brokers because they often have special insurance requirements, such as employee benefits. A broker can help them develop an insurance plan and write the policy, then find an insurance company willing to take the risk. Because brokers work in the field every day, they are familiar with many insurance companies, and what kind of risks they are willing to insure. Thus, the broker can match the applicant to the insurer—**field underwriting**.

Brokers are also needed to provide a market for surplus lines. **Surplus lines** are any type of insurance that is not offered by any insurer that is licensed to do business within the state, and the business must be placed with a **nonadmitted insurer**, which is an insurer that is not licensed for that state. This need arises because there is a need for some types of insurance or for a certain amount of coverage that is not provided by any insurance company licensed to do business in the state. When coverage is not available by insurers licensed in that particular state, state law allows the placement of that business with a nonadmitted insurer, through the services provided by a **surplus lines broker**, who is a broker licensed to place business with nonadmitted insurers.

Differences Between Insurance Brokers and Agents

The relationship among the broker, the insured and the insurer is different from the relationship among an agent, the insured, and the insurer. Because the broker represents the applicant and not the insurance company, what is communicated or given to the broker is not considered relayed to the insurance company by law, so it is important to deal with a reputable broker. If the insurance applicant conveys material information to a broker, but the broker does not communicate it to the insurance company, the company may, later, deny the payment of a claim because of the concealment of the material information.

In some court cases, however, it has been held that the broker is, in fact, an agent of the company because of the relationship that actually existed between the broker and the company, where the broker served as intermediary between the insured and the insurer in all of their dealings. Because many people don't understand the distinction between brokers and agents, and rely on the broker as being the actual representative of the company, some states have passed laws stipulating that insurance brokers are legal agents of the insurance companies, so that consumers can be assured that anything relayed to the broker will have been deemed relayed to the insurance company.

One of the disadvantages of dealing with a broker is that the broker cannot bind the insurance company; thus, the insurance applicant must wait for approval from the insurance company before the insurance is in force. To overcome this limitation, many brokers also are agents of some of the insurance companies.