

10: APPLYING AGENCY LAW

- types of ins producers (personnel who sell or place ins for ins cos)
 - agent
 - represents ins co
 - general agent: does **all** of principal's biz of a particular kind or in a particular place
 - special agent: acts for principal in a specific transaction, for specific purpose, or specific customer group only
 - soliciting agent:
 - employed only to solicit applications & perform duties directly related to that
 - all powers & duties spelled out directly in agency contract (because they are so limited)
 - broker
 - represents insds
 - does **not** work for any specific ins co
- producer auth
 - 2 types of auth
 - *actual/real auth* (express or implied auth that ins co intends for producer to have)
 - *apparent/implied auth*
 - a 3rd party's reasonable belief that producer had auth
 - if a principal regularly ratifies (approves) an agent's particular action, apparent auth may start to emerge
 - auth for **agents**
 - general agents – have broadest auth & likely to also have apparent auth
 - special agents – usually, any action beyond soliciting won't be binding unless insd can show apparent auth
 - auth for **brokers**
 - since they do **not** work for ins co, they cannot bind ins co to anything w/o ins co agreement
 - typically has power to bind **insd** to a transaction
 - duties as a **broker**
 - procure ins for **insd**
 - select ins co to provide desired cov
 - arrange for payment of prem
 - canx pol & receive unearned prem refund on that pol which broker had obtained
 - obtain new pol upon canx of a previous one that broker had obtained
 - notice & knowledge rcvd by **agents**
 - info known by agent is assumed to be known by ins co too, even if info not actually passed on
 - ex: if insd tells agent a fact, ins co can't later deny cov saying they didn't know that fact
 - exceptions
 - if no actual agency relationship exists
 - info known by **broker** is **not** considered imputed to ins co b/c agency relationship is btwn broker & insd, not broker & ins co
 - if agent passes on false info to ins co
 - if agent knew info was false – agent wasn't acting in ins co's best interest so agency relationship terminated & ins co not liab
 - if agent didn't know info was false – ins co still not liab to insd as insd was the wrongdoer

- auth to bind cov
 - *binder*: temporary cov until formal ins pol issued
 - for cov to bind, parties must agree on essential terms (which don't have to be in writing)
 - subject matter of ins (ex: car, home, etc)
 - loss exposures to be insured
 - premium
 - pol dates
 - coverage amts
 - ID of parties (insd & ins co)
 - if producer sells for multiple ins cos & hasn't named specific one for pol yet but a loss occurs:
 - raises question of which ins co is bound to cover loss
 - this is the most commonly-encountered issue w/ oral & temp contracts
 - key questions:
 - does only 1 ins co that producer represents sell the kind of cov purchased?
 - has producer previously placed all of this insd's biz w/ the same ins co?
 - did producer issue any doc before loss indicating intent to form contract w/ a particular ins co?
 - if none of above, no pol contract has formed but insd can sue agent for error
 - if agent sold pol w/o actually having auth to bind cov, **only ins co can decide whether to ratify/accept agent's transaction**
- how to terminate agency relationship
 - usually outlined by agency contract
 - common means to terminate is expression by parties
- producer's duties & liabilities
 - to insds
 - 5 duties to insds
 - follow insd's instructions
 - if instructions ambiguous, agent justified in acting on reasonable interpretation
 - procure ins requested (including types of cov requested & extent of cov requested)
 - maintain cov
 - place ins w/ solvent ins co (agent has duty to investigate ins co's solvency)
 - duty to advise (provide advice)
 - factors that contribute to producer's liab
 - specialized line of ins requiring unique knowledge
 - producer's specific knowledge about insd's biz & ins needs
 - insd clearly relies on producer's expertise
 - insd gives responsibility to producer to negotiate ins contract
 - long relationship btwn insd & producer
 - for their protection, producers should keep written documentation of all advice given to customers
 - 5 defenses producer can raise to breach of duty
 - no duty owed to insd
 - no duty breached
 - insd partly at fault
 - insd failed to read pol

- if no ins **whatsoever** is avail that meets customer's specifications
 - i.e., if insd wants cov terms that no ins co will sell to them, it is impossible for producer to fulfill his duty
- duties to ins co
 - disclose risks (i.e., pass on any u/w concerns)
 - follow ins co's instructions
 - loyalty & acct
 - transmit info properly & promptly