

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 158

June 26, 2000

SUBJECT: AGENT OF RECORD LAW

BACKGROUND: Louisiana's Agent of Record Law, 22:1118.F., was amended in 1999 to address certain procedural issues regarding how, when, and by whom the agent of record could be changed, and which agent is to receive commission after a change of agent takes place.

MAIN POINTS: In a recent IIAL Technical Advisory (TA#156 of April 26, 2000), several questions frequently asked by agents regarding implementation of the agent of record law were analyzed. Since then, additional questions have been posed by members, and IIAL consulted with the Louisiana Department of Insurance on the issues that were raised.

ISSUE #1. The first issue regards the fifteen-day notice that the insurer is required to give the current agent, and which agent receives the commission. Fundamentally, the law states that if a request is made by the insured within the last fifteen days of an existing policy immediately **before** a renewal, the current agent is still entitled to a full fifteen-day notification by the insurer, even if part of the notification extends into the renewal policy period. At the end of the fifteen days, whichever agent ends up as the agent of record, as selected by the insured, is deemed by law to be the agent since the inception of the renewal, and receives the entire commission for the renewal policy.

However, a slightly different scenario arises if the insured were to request a change of agent shortly **after** a policy renews. The current agent will receive the fifteen-day notification from the insurer, but no matter which agent ends up being the agent of record for the balance of the policy, the entire commission goes to the agent who was the agent of record at inception.

When does the fifteen-day period start to run? Is it when the insured signs the agent of record request, or when it is actually received by the insurer? The answer is critical, since it determines whether or not the new agent can receive commission on the renewal. For example, if the insured signs the agent of record request before the current policy expires, and if the fifteen days starts to run at that point, then the new agent can receive

commission for the renewal, as described in the first above scenario. However, if the fifteen days doesn't start to run until it is received by the insurer, then a request signed prior to expiration, but not physically received by the insurer until after the renewal date, would prohibit the new agent from receiving the renewal commission, as described in the second scenario above.

A copy of the statute is enclosed at the end of this Technical Advisory. For reference, see these two relevant sections: 22:1118.F.(1)(a) and (b).

Subsection (a) seems to indicate that it is the request by the insured which initiates the change of agent process. Subsection (a) states that no change of agent can be made *"...unless the change or removal is requested by the insured under a particular contract."* However, Subsection (b) includes the statement, *"If the insurer receives a request to change an agent within the last fifteen days of the policy period, the insurer shall provide the required fifteen day notice;..."*

IIAL consulted with the legal staff of the Louisiana Department of Insurance, posed the above situations, and asked their interpretation of when the fifteen-day notification period started to run. It is the Department's interpretation that, *"It is the request of the insured that triggers the insurer's duty to change or remove the agent of record and to notify the agent of the change or removal. The timing of the receipt of the request from the insured by the insurer is only significant as to when the insurer gives notice to the agent, and has no impact on when the change or removal is to be made. The timing of the change or removal is dictated by Subsection (a), not (b)."*

Clearly, therefore, it is the date the insured requests the change of agent that starts the fifteen-day notification period, not when it is physically received by the insurer.

ISSUE #2. On a related issue, numerous inquiries received by IIAL have addressed the question of whether or not the insurer can sidestep the agent of record procedure simply by canceling and rewriting the policy, effectively avoiding paying the balance of the commission to the original agent. This practice is specifically prohibited by the statute. See 22:1118.F.(2) *Except as provided in Paragraph (1) of this Subsection, no insurer or agent shall cancel and rewrite any such contracts during the term of such contract or until the renewal date of the contract, whichever occurs first, which would change the agent of record.*

Agent of Record Statute:

[22:1118.F.(1)(a)] *Any insurance company authorized to transact property or casualty insurance business in this state or issuing or delivering property or casualty insurance, or fidelity bonds in the state shall retain information of the agent of record who wrote such policies or bonds for the full term of the contracts, or until the renewal date or termination of the contracts, whichever occurs first. The insurer shall not change or remove such agent by any agent of record letter which may be secured by another agent during the term of such contracts or until the renewal date of the contracts, whichever occurs first unless the change or removal is requested by an insured under a particular contract. The insured shall select the new agent of record.*

(b) If a change or removal of an agent is requested by an insured, the insurer shall give the agent written notice fifteen days in advance of the change or removal as to the particular insured's contract. If the insurer receives a request to change an agent within the last fifteen days of the policy period, the insurer shall provide the required fifteen day notice; however, any required change of agent shall be effective on the inception date of the renewal policy. The original agent shall retain the right to commissions for the term of the existing policy. It shall be the duty of the insurer to assure that the insured's policy is serviced by an agent after the removal.

(2) Except as provided in Paragraph (1) of this Subsection, no insurer or agent shall cancel and rewrite any such contracts during the term of such contract or until the renewal date of the contract, whichever occurs first, which would change the agent of record.

(3) This Subsection shall not apply to any agent who is an employee of an insurer or represents, by contractual agreement, only one insurer or a group of affiliated insurers under R.S. 22:1001 et seq.

(4) The commissioner of insurance may promulgate rules to enforce the provisions of this subsection."

**NECESSARY
ACTION:**

Circulate this Technical Advisory to all appropriate agency and company personnel.