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BULLETIN NUMBER 2009-17

TO: Insurers, Brokers, Producers, Managing General Agents and All Other Persons Transacting the Business of Insurance in the State of South Carolina

FROM: Scott H. Richardson, CPCU 
Director

SUBJECT: 2009 Broker Licensing Changes

DATE: September 9, 2009

I. PURPOSE AND SCOPE OF THIS BULLETIN

The purpose of this bulletin is to highlight the broker licensing changes effected by 2009 S.C. Act No. 69 (Act). The changes in S.C. Code of Laws § 38-45-10 and § 38-45-20 became effective upon the Act's approval by Governor Mark Sanford on June 2, 2009. The changes in the law apply to all licensed brokers and individuals applying for broker license authority.

II. BROKER LICENSE REQUIREMENTS

A. Definition of "Insurance Broker"

The definition of 'insurance broker' in S.C. Code § 38-45-10 has been amended to provide clarification of the license requirements for a property and casualty insurance broker. The definition of an 'insurance broker' was further amended to specify that a broker's license is not required of a broker's office employee acting (1) within the confines of the broker's office, (2) under the direction and supervision of the licensed broker and within the scope of the broker's license, (3) in the acceptance of requests for insurance and payment of premiums and (4) in the performance of clerical, stenographic, and similar office duties.

B. Broker's License Required to Sell, Solicit, or Negotiate Insurance on Behalf of an Insured

A broker's license is required before a producer is permitted to sell, solicit, or negotiate insurance products with a non-admitted insurer on behalf of an insured. See S.C. Code Section 38-45-10, which provides:

- (A)(1) An 'insurance broker', as used in this chapter, means a property and casualty insurance producer licensed by the director or his designee who:
- (a) sells, solicits, or negotiates insurance on behalf of an insured;

(b) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insured;

(c) advertises or otherwise gives notice that he receives or transmits a surplus lines application or policies;

(d) receives or delivers a policy of surplus lines insurance for an insured on behalf of a surplus lines insurer;

(e) receives, collects, or transmits a premium of surplus lines insurance; or

(f) performs another act in the making of a surplus lines insurance contract for or with an insured.

(2) However, an insurance broker's license is not required of a broker's office employee acting within the confines of the broker's office, under the direction and supervision of the licensed broker and within the scope of the broker's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties.

(B) An insurance broker may place insurance either with an eligible surplus lines insurer or with a licensed insurance producer appointed by an insurance carrier licensed in this State.

C. Producer Appointment No Longer Required to Maintain a Broker's License

S.C. Code § 38-45-20 has been amended to permit a producer to become licensed as a broker in the same lines of insurance for which he is authorized to act as a producer without having an appointment from a licensed insurer. As a result, licensed brokers may now maintain their licensure status without having an active producer appointment from a licensed insurer. Resident brokers are still required to have an active producer license to maintain their broker's license.

D. Customer Service Representatives

1. A customer service representative (CSR) performing any of the duties outlined in S.C. Code Section 38-45-10(A)(1) must obtain a broker's license. If a CSR is *acting within the scope, duties and direction of a licensed broker*, as defined in Section 38-45-10, the CSR is not required to be licensed. The following additional requirements must be met:

a. There must be one South Carolina licensed broker whose principal place of business is the physical office location in which brokerage activities occur. There must be one principally housed, South Carolina licensed broker per physical office location;

b. The insurance application must be signed by the licensed broker within the CSR's office location;

c. The license exemption does not apply to multiple office locations;

d. The CSR's job duties in relation to the broker's job duties must be clearly described and limited in the CSR's written job description;

e. A licensed broker utilizing the services of a CSR to perform broker duties must have written documentation in their office files identifying those CSRs acting under the authority of the broker's license; and

f. Position descriptions evidencing the CSR's job responsibilities must be retained by the Broker's agency for a minimum of five years after the CSR leaves the employment of the respective broker.

2. *Activities permitted* for an individual not licensed as a broker but acting under the scope, duties, and direction of a licensed broker.

Unlicensed individuals are permitted to perform the following duties when acting within the confines of a broker's office, under the direction and supervision of the licensed broker and within the scope of the broker's license:

- Take application information from a client or potential client;
- Complete an application for coverage;
- Provide a client or potential client with rate information;
- Prepare invoice/ billing for policies;
- Perform clerical and stenographic duties;
- Submit surplus lines applications signed by a licensed broker to wholesalers for a quote;
- Type, collate, or assemble a surplus lines insurance proposal;
- Request binding on behalf of a licensed broker of surplus lines coverage from a wholesaler or surplus lines carrier;
- Accept premiums; and
- Take and submit claim information.

Unlicensed individuals working under the direction of a licensed broker must be provided a written list of clearly described and limited duties expected to be performed that fall within the authority of the broker's license. The licensed broker is responsible for the activities of the persons in the broker's office not licensed as a broker and must ensure that these unlicensed individuals are complying with South Carolina insurance law.

3. Examples of activities *not permitted* of an individual not licensed as a broker.

Individuals that are not licensed as a broker are **not permitted** to perform any of the following duties:

- Sell, solicit, or negotiate insurance on behalf of an insured;
- Sign an application of insurance on behalf of a licensed broker;
- Enter into a contract on behalf of a broker;
- Advise or make recommendations concerning insurance coverage through a non-admitted carrier; or
- Discuss coverage or other policy language with a wholesaler or surplus lines carrier or with a client or potential client.

III. QUESTIONS

Questions regarding this Bulletin should be submitted in writing to Jim Byrd, Deputy Director or Mary Ann O'Brien, Licensing Manager:

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