

6-15-84

1 Department of Commerce

2

3 Adoption of Rules Relating to Insurance Agent Conduct

4

5 Rules as Adopted

6 4 MCAR S 1.9011 Authority and scope.

7 Rules 4 MCAR SS 1.9011-1.90281 are promulgated pursuant to
8 the authority of Minnesota Statutes, section 60A.17, as amended
9 by Laws of Minnesota 1983, chapter 263, and are intended to
10 govern the interest of all licensed insurance agents in this
11 state.

12 4 MCAR S 1.9012 Definitions.

13 A. Scope. As used in 4 MCAR SS 1.9011-1.90281, the terms
14 defined in this rule shall have the meanings given them.

15 B. Agent. "Agent" means an insurance agent licensed under
16 Minnesota Statutes, section 60A.17.

17 C. Brokerage business. "Brokerage business" means business
18 transacted as provided in Minnesota Statutes, section 60A.17,
19 subdivision 3.

20 D. Commissioner. "Commissioner" means the commissioner of
21 the Minnesota Department of Commerce.

22 E. Licensee. "Licensee" means an individual or an agency
23 licensed under Minnesota Statutes, section 60A.17, subdivision 1.

24 F. Placing agent. "Placing agent" means a licensed and
25 appointed agent of an insurer through whom an application for
26 insurance is submitted to the insurer on behalf of a soliciting
27 agent who was not appointed by that insurer at the time the
28 application was solicited.

29 G. Soliciting agent. "Soliciting agent" means an agent who
30 sells or attempts to sell insurance to a person.

31 H. Supervising agent. "Supervising agent" means an agent or
32 general agent who contracts with, employs or engages one or more
33 other agents to solicit applications for insurance, or to
34 otherwise act as insurance agents on the supervising agent's
35 behalf. In the case of an agency required to be licensed under

1 Minnesota Statutes, section 60A.17, subdivision 1, the
2 supervising agents, if not specifically designated, shall be the
3 licensed officers of the corporate agency, or the partners of a
4 partnership agency.

5 4 MCAR S 1.9013 Loans from clients.

6 A. Requirements. No agent shall solicit or accept a loan
7 from an individual with whom the agent came into contact in the
8 course of the agent's business, unless the loan agreement or
9 note is in writing, the lender is provided with a fully executed
10 copy of the agreement or note at the time the loan is made, and
11 the terms of the loan are lawful.

12 B. Unfair, dishonest, and unconscionable loans.

13 Notwithstanding A., no agent shall solicit or accept a loan
14 under dishonest, unfair, or unconscionable circumstances from an
15 individual with whom the agent came into contact in the course
16 of the agent's business. In determining whether a particular
17 loan was solicited or accepted under dishonest, unfair, or
18 unconscionable circumstances, the commissioner must consider the
19 following:

20 1. the prior relationship between the agent and the
21 lender;

22 2. the lender's age, mental state, and capacity;

23 3. the terms of the loan, including the amount, duration,
24 and rate of interest, and the agent's compliance with those
25 terms;

26 4. provisions for collateral or security;

27 5. the lender's income and net worth;

28 6. the involvement or lack of involvement of a family
29 member of the lender, or some other neutral third party, in the
30 negotiation of the loan;

31 7. any prior history of unfair treatment of the lender
32 which the agent knew or should have known about;

33 8. indications of high pressure solicitation, coercion,
34 intimidation, or undue influence by the agent in securing the
35 loan;

36 9. the agent's representations regarding the need for or

1 intended use of the loan; and

2 10. any other factors which reflect on whether the loan
3 was dishonest, unfair, or unconscionable.

4 C. Records required of agent. An agent who accepts or has
5 an outstanding loan from an individual with whom the agent came
6 into contact in the course of the agent's business, must
7 immediately compile and maintain for at least six years after
8 the loan has been fully repaid, a list of the individuals from
9 whom the agent has borrowed money, together with all
10 documentation relating to the loans and the circumstances under
11 which each was made.

12 4 MCAR S 1.9014 Delivery of policies.

13 Policies, certificates, or other evidence of insurance
14 which are received by an agent from an insurer for delivery to
15 an insured must be delivered or mailed to the insured by the
16 agent within 30 working days of the agent's receipt, unless the
17 insured agrees in writing that the agent may retain them.

18 4 MCAR S 1.9015 Receipts for materials.

19 An agent who takes possession of an insured's or a
20 potential insured's insurance policies, certificates, or other
21 documents pertaining to existing or pending insurance, must
22 leave a written receipt for those materials at the time the
23 agent receives the materials. The receipt must contain an
24 itemized list of the materials received, the agent's name, and
25 the address and telephone number of the agency or other place
26 where the agent can be contacted. The receipt must be dated and
27 signed by the agent.

28 4 MCAR S 1.9016 Other licenses.

29 It is an untrustworthy practice within the meaning of
30 Minnesota Statutes, section 60A.17, subdivision 6, for an
31 insurance agent to engage in any unfair, deceptive, dishonest,
32 untrustworthy, or fraudulent conduct which leads to the
33 revocation of a license which the agent holds under Minnesota
34 Statutes, chapter 80A or 82.

1 4 MCAR S 1.9017 Criminal convictions; disciplinary actions in
2 other states.

3 A. Report of conviction. An agent who is convicted of a
4 felony, gross misdemeanor, or a misdemeanor involving moral
5 turpitude must report the conviction to the commissioner within
6 ten working days of the conviction.

7 B. Report of disciplinary action. An agent whose insurance,
8 securities, or real estate license is suspended or revoked in
9 another state, or who has been ordered to pay a civil penalty
10 because of conduct in the insurance, securities, or real estate
11 industries in another state, must report the disciplinary action
12 to the commissioner within ten working days of the effective
13 date of the action.

14 4 MCAR S 1.9018 Duties of supervising agents.

15 A. Agents' behavior and licensing. A supervising agent
16 shall have the duty to ensure that contracted, employed, or
17 engaged agents:

18 1. are properly licensed in the lines of insurance in
19 which they do business;

20 2. promptly remit all premiums and return premiums,
21 refunds, claim settlements, or other money or things of value in
22 the agents' possession obtained as a result of an insurance
23 transaction and due and payable to any person, firm, or insurer;
24 and

25 3. comply with laws and rules of the Department of
26 Commerce.

27 B. Establish written procedures. A supervising agent must
28 establish, maintain, and enforce written procedures which will
29 ensure proper supervision of the activities of each agent and
30 compliance with insurance laws and rules.

31 C. Annual Account examination. Every supervising agent must
32 conduct an examination for each agent of those client accounts
33 ~~for each agent who is~~ which are within the scope of the
34 supervisor's responsibility. The examinations must be conducted
35 as often as is necessary for the supervising agent to discharge
36 his supervisory responsibilities.

1 4 MCAR S 1.9019 Suitability.

2 In recommending the purchase of any life, endowment,
3 annuity, life-endowment, or ~~medica~~ medicare supplement
4 insurance to a customer, an agent must have reasonable grounds
5 for believing that the recommendation is suitable for the
6 customer, and must make reasonable inquiries to determine
7 suitability. The suitability of a recommended purchase of
8 insurance will be determined by reference to the totality of the
9 particular customer's circumstances, including, but not limited
10 to, the customer's income, the customer's need for insurance,
11 and the values, benefits, and costs of the customer's existing
12 insurance program, if any, when compared to the values,
13 benefits, and costs of the recommended policy or policies.

14 4 MCAR S 1.9020 High standards of commercial honor.

15 Every agent must observe high standards of commercial honor
16 and just and equitable principles of trade in the conduct of the
17 agent's insurance business.

18 4 MCAR S 1.9021 Registered office for resident agents.

19 Every agent who is licensed as a resident agent must
20 maintain a registered office for service of process in this
21 state. The address of the office must be specified on all
22 license applications and renewal applications.

23 4 MCAR S 1.9022 License display and use.

24 A license must be displayed in the licensee's office in a
25 place where it can readily be viewed and inspected.

26 Any written or oral advertisement or representation which
27 refers to licensing, used by a licensee, must contain a
28 disclaimer that the reference to licensing is not an
29 endorsement, sponsorship, or implied endorsement or sponsorship
30 of the licensee or its products, by the state of Minnesota, the
31 Department of Commerce, or any other state agency.

32 4 MCAR S 1.9023 Receipt of client funds.

33 An agent who receives funds from a client in connection
34 with an insurance transaction receives and holds those funds in

1 a fiduciary capacity.

2 An agent holding funds of a client must, each month,
3 provide to the client an itemized statement showing the amount
4 of money held.

5 4 MCAR S 1.9024 Mandatory financial records of agents and
6 agencies.

7 A. Type of records. Every agent and agency must keep a
8 record of all funds received for or from clients, including
9 cash, notes, savings certificates, uncashed or uncollected
10 checks, or other similar instruments. Insurers represented by
11 exclusive agents may compile and maintain the financial records
12 required by this rule on their agents' behalf. The records must
13 set forth the date funds were received, from whom received, the
14 amount received, the date of deposit of the funds into the
15 business account of the agent or agency, and the monthly balance
16 of the account in which the funds are deposited. Each agent and
17 agency must maintain a cash receipts journal and a cash
18 disbursements journal, or similar records, in accordance with
19 generally accepted accounting principles.

20 B. Separate records. Each agent and agency must keep a
21 separate record for each client or transaction, accounting for
22 all funds which have been deposited in the agent's business
23 account. These records must set forth the information
24 sufficient to identify the transaction and the parties thereto.
25 At a minimum, each record must set forth:

- 26 1. the date funds are deposited;
- 27 2. the amount deposited;
- 28 3. the date of each related disbursement;
- 29 4. the check number of each related disbursement;
- 30 5. the amount of each related disbursement; and
- 31 6. a description of each disbursement.

32 C. Examination of records. All records must be maintained
33 for at least six years, and funds must be available for
34 examination by the commissioner or a designee in accordance with
35 Minnesota Statutes, section 60A.031.

1 4 MCAR S 1.9025 Mandatory complaint records.

2 Every agent and agency must compile and maintain a separate
3 complaint file for each agent against whom a complaint,
4 grievance, or allegation is made. The file must contain all
5 written notes, reports, correspondence, or other documents made
6 or received by an agent or agency, relating to customer
7 grievances or allegations that an agent, agency, or person
8 associated with an agent or agency has engaged in any unfair,
9 false, misleading, dishonest, fraudulent, untrustworthy,
10 coercive, or financially irresponsible practice, or has violated
11 any insurance law or rule. The agent or agency must maintain
12 the records for at least six years after the date of the
13 complaint.

14 4 MCAR S 1.9026 Termination of appointments or contracts.

15 An insurer or agency which terminates an agent's
16 appointment, or its contract or association with an agent based
17 entirely or in part on a complaint or alleged violation of law,
18 or with knowledge of an alleged violation of law, including, but
19 not limited to, the failure to remit premiums, must, within ten
20 working days of the termination, forward to the commissioner a
21 written statement of the reason for the termination. The
22 statement must include the names, addresses, and, if available,
23 telephone numbers of all persons having knowledge of the matter;
24 copies of any applications, checks, or other documents relating
25 to the complaint or alleged violation which are in the insurer's
26 or agency's possession or control; copies of all statements or
27 affidavits taken from any person in connection with the
28 complaint or allegations; and a current statement of the agent's
29 account with the insurer or agency.

30 4 MCAR S 1.9027 Refunds.

31 An agent who receives a request for cancellation of a
32 policy must make the refund or initiate the refund procedures
33 with the insurer, within ten days of the agent's receipt of the
34 request. An agent who receives a refund from an insurer for the
35 account of, or for delivery to, an insured or former insured,

1 must deliver or mail the refund, or cause it to be delivered or
2 mailed to the insured or former insured within five days of
3 receipt.

4 4 MCAR S 1.9028 Insurance in connection with a loan.

5 No agent shall misrepresent the necessity for obtaining
6 insurance in connection with a loan, nor the terms of such
7 insurance.

8 4 MCAR S 1.90281 Penalties.

9 Violations of 4 MCAR SS 1.9011-1.90281 subject the violator
10 to the penalties described in Minnesota Statutes, sections
11 60A.17, subdivision 6c, and 72A.22 to 72A.29.

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13 Renumbering. Renumber INS 20 as 4 MCAR S 1.9010.