THE NATIONAL ALLIANCE
for Insurance Education & Research

Section 6 – Unfair Trade Practices, Unfair Claims Settlement Practices, the Need for Errors and Omissions Coverage, and the Golden Rule

States have implemented unfair trade practices acts. These acts attempt to codify into law a moral code regarding how agents and companies should act towards each other. These unfair trade practices also serve to define those practices that may be harmful or deceptive to consumers. Unfair claims settlement practices acts, as legislated by the states, protect consumers from some of the more egregious claims settlement and delay practices.

Even ethical agents make mistakes. Most agents purchase errors and omissions coverage to provide defense and indemnity against the negligent errors that an agent can make in the ordinary course of business. Some of these errors can be attributed to sloppy paperwork or other practices, yet others have their foundation in ethics where decisions were made or actions taken that were not right, and when uncovered or discovered, actual harm resulted.

The course closes with a brief discussion of the Golden Rule, probably the simplest statement of the application of ethics that has been written down.

Learning Objectives

1. Name the unfair trade practices listed in the NAIC Unfair Trade Practices Model Act.
2. List the common provisions of state unfair settlement claims practices laws.
3. Give examples of the types of claims made against agents that errors and omissions policies cover.
4. Explain the common features found in most agent errors and omissions policies.
5. Explain the meaning of the Golden Rule.

Section 6 Topic A – Unfair Trade Practices Act

The NAIC (National Association of Insurance Commissioners) developed a model regulation for unfair trade practices in 1991 (with later amendments). Many states have adopted this act in total or in part. The purpose of the act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Unfair Trade Practices Act of 1945. We won't review the entire act; only summarize the unfair trade practices outlined in the act.

Learning Objective: Name the unfair trade practices that are listed in the NAIC Unfair Trade Practices Model Act.

Unfair Trade Practices Act of 1945

A. **Misrepresentation & False Advertising of Policies including:**
   - Misrepresentation of benefits
   - Misrepresentation of dividends
   - Misrepresentation of the financial condition of an insurer
   - Intentional misrepresentation of the premium to induce purchase
   - Misrepresentation of the policy as shares of stock

B. **False Information and Advertising Generally**—In the papers, on the radio, television, on the Internet etc.

C. **Defamation**—Making, publishing, circulating etc. oral or written statements which are false or maliciously critical or derogatory to the financial condition of any insurer, and which is calculated to injure such insurer.

D. **Boycott, Coercion and Intimidation**—Boycott: A local agent association refuses to do business with an insurer until it increases its commission schedule.

E. **False Statements and Entries**—Knowingly making false statements to the insurance department or other regulatory authorities (including, for example, the SEC).

F. **Stock Operations and Advisory Board Contracts**—Offering stock as an inducement to purchase insurance. Unfair Discrimination—unfair discrimination between persons or businesses in the same class. This includes underwriting and pricing considerations.

G. **Rebates**—Except where provided by law i.e. Florida

H. Prohibited Group Enrollments—e.g. An insurer cannot appoint a trade association manager to write insurance for the association unless that person is licensed. (Controlled business statutes in the states generally prohibit the association manager from being the agent for the association.)

I. Failure to Maintain Complaint Handling Procedures—For insurers, the process to handle complaints by consumers to the insurance department.

J. Misrepresentation in Insurance Applications—Making false statements on a policy to obtain a fee, commission, money or other benefit from any insurer, agent, broker or individual.

K. Unfair Financial Planning Practices—Deals with a life insurance agent holding himself/herself out to be a financial planner when in fact the agent only sells life insurance. Collecting both a fee and a commission on a life insurance policy is not permitted. Also, included are client disclosure requirements as to compensation, expertise and the like.

Section 6 Topic B – Unfair Claims Settlement Practices Acts

Learning Objective: List the common provisions of state unfair settlement claims practices laws.

Each state has legislated a different unfair claims settlement practices act. Many unique state provisions have to do with time limits for certain filings or settlements, or for unethical claims practices that were prosecuted in the state.

Policy Misrepresentation

The company cannot knowingly misrepresent policy provisions at the time of claim, nor can the company alter policy conditions, exclusions or add endorsements that were not part of the original policy without your consent.

Good Faith Negotiation

The company cannot hold up the settlement for the collision coverage until it has settled with you for uninsured motorists coverage.

Claims Acknowledgement

The company must promptly acknowledge that it has received your claim. What is prompt varies by state. For example, states often specify that the insurer must contact the insured on first party auto claims within so many days after the claim has been reported by the insured.

The company must also establish guidelines for investigating and processing claims so that claims are not dragged out unnecessarily. These requirements vary by state. The company cannot also require excessive or duplicitous paperwork.

Forcing Claimant to Sue

- **Require the insured to sue for larger settlement** — the company cannot say, "the only way you can get more money than I am offering is to sue us."

Abuse of Legal System

- **Can't abuse the legal system** — the company cannot file endless appeals and extensions to drag out cases.

Explanation of Claim Denial

- **Claims denial must be related to the facts of the claim** — the insurer must provide a factual explanation of why the claim is not covered

Summary

NAIC Unfair Trade Practices Model Act

- Misrepresentation and false advertising
- False information
- Defamation
- Boycott, coercion, and intimidation
- False statements and entries
- Stock operations and advisory board contracts
- Unfair discrimination
- Rebates
- Prohibited group enrollments
- Failure to maintain complaint handling procedures
- Misrepresentation in insurance application
- Unfair financial planning practices

Unfair Claims Settlement Practices Act

- Policy misrepresentation
- Negotiate in good faith all policy coverages
- Claims acknowledgement and processing
- Require insured to sue for larger settlement
- Abuse of legal system
- Claim denial must be related to facts of the claim

Section 6 Topic C – The Need for Errors and Omissions Coverage

Learning Objective: Give examples of the types of claims made against agents that errors and omissions policies cover.

Agents and agencies make mistakes:

- Applications are not properly completed.
- Phone messages get lost.
- The customer says she told the agent she wanted coverage for auto; the agent doesn't remember.
- The customer believes the agent should have offered higher limits of insurance.
- The company believes the agent has given confidential information to its competitor.
- Through apparent authority the company must pay the claim, but subrogates against the agent because the agent did not have authority to bind the coverage.
- The agent lost the customer's check.

These and many other scenarios can lead to claims against the insurance agent that are not covered in the general liability contract or other standard business liability coverage forms. Whether or not the agent is ultimately found to be responsible for the loss, the agent will need to defend against the accusation. Some errors and omissions cases cost hundreds of thousands of dollars to defend.

Learning Objective: Explain the common features found in most agent errors and omissions policies.

Features of Errors & Omissions Policies – Premium and Limits

The following features are commonly found in agent errors and omissions policies:

- Policies are generally claims made.
- Offer limits of one million or higher.
- Deductibles are usually in the thousands or higher.
- Premiums have increased substantially as claims have increased in number and size.

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Features of Errors & Omissions Policies – What is Covered

- Defense may be within the limit of insurance. Some policies provide a certain amount of additional defense outside the limit of insurance.
- Wrongful acts arising out of the performance of professional services are covered, as defined by the policy.
- May or may not cover related activities i.e. financial planning, brokering, acting as a Managing General Agent.
- Negligence, not fraud is covered. The contract excludes employee dishonest that would be covered under an employee dishonesty ins. policy. Does not pay fines. Most do not cover punitive damages.

Features of Errors & Omissions Policies – Other Common Characteristics

- The policy may include a duty to defend; some policies do not
- Will not pay for intracompany suits—i.e. one producer sues another
- Employment related practices claims are excluded
- Employee benefits liability claims are excluded
- Claims for monetary relief are paid; equitable relief claims are not i.e. the agreed upon remedy is to apologize on the radio or fulfill contract terms.
- In some E&O contracts the company must gain consent to settle from the insured; in other contracts the company can settle without the insured's consent

Summary

Need for Agent's E&O

- Application error
- Lost messages
- Agent forget to add coverage
- Should have offered higher limits
- Agent gives confidential information to competitor
- Apparent authority
- Agent lost check

Agent E&O Policy Features

- Claims made
- 1 Million+ limits
- Deductibles
- High premium
- Defense – in or outside limit
- Professional services defined
- May not cover related activities
- No fraud
- Duty to defend
- No intracompany suits
- No EPLI
- No employee benefits liability
- Monetary relief no equitable relief
- Permission to settle

Section 6 Topic D – The Golden Rule

Learning Objective: Explain the meaning of the Golden Rule.

There are many ways of saying it:

Christian Version: "Therefore all things whatsoever ye would that men should do to you, do ye even so to the; for this is the law and the prophets." (I.e. do unto others as you would have them do unto you.)

Hebrew Version: "What is hateful to you; do not to your fellow men. This is the entire law; all the rest is commentary."

Islamic Version: "No one of you is a believer unless he desires for his brother that which he desires for himself."

The Practical Results of Ethical Behavior

Customers
Customer reputation for honesty and fairness and for concern for the client

Peers
Peer reputation for fairness and honesty in competition and recognition that the person enhances the reputation of the industry

Company
Company reputation for fair dealing and honesty; someone who seeks the correct balance between loyalty to the insurer and service to the customer

Community
Community reputation for being an honest and ethical business person

Employees
Employee peace of mind—they won't be asked to or be required to act unethically

Your Family
Ethical family values

You
Personal peace of mind

Be sure to complete Self Quiz 6 at the end of Section 6.