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PUBLICATION FOR AGENTS AND ADJUSTERS FROM
THE STATE OF FLORIDA DEPARTMENT OF INSURANCE

Bill Nelson
Treasurer/Insurance Commissioner/Fire Marshal

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Opening An Insurance Agency?

*Here are some of the most frequently asked questions,
along with our response and the applicable statutory cite(s).*

Q Does the Department of Insurance publish guidelines that tell me how to start an insurance agency?

A There is not a separate document published by the Department. Chapter 626, Florida Statutes, entitled "Insurance Field Representatives and Operations" defines the procedures and general requirements pertaining to the operation of an insurance agency in Florida.

Additionally, Rule Chapters 4-211, 4-213, 4-215, 4-220, 4-221, 4-222, 4-223, 4-228, 4-230 and 4-231, address issues that directly affect insurance representatives (agents, adjusters, bail bondsmen, etc.).

If you need access to the publications listed above, your local library is a good source for obtaining a copy. The Florida Statutes and the Administrative Code are also available for purchase. For information about purchasing the statutes, write the Law Book Distribution Office, Room LL 14, The Capitol, Tallahassee, FL 32399-1400, or telephone (904)488-2323; for information about purchasing the Florida Administrative Code, write the Nils Publishing Company at 21625 Prairie Street, Chatsworth, CA 91311, or telephone 1-800-423-5910.

A CD containing the Florida Statutes and Administrative Code is also available. For information contact Compass Data Systems, 967 East Murray Holladay Road, Salt Lake City, UT 84117, telephone 1-800-950-1940.

Q Is an insurance agency required to be licensed?

A Procedurally, a life and health and/or general lines (property & casualty) insurance agency is not required to be licensed, but the law specifically requires the business of insurance to be transacted only by properly licensed and appointed agents who are eligible to sell the lines of insurance offered. Unlicensed principals who operate an insurance agency must employ licensed agents and must ensure that they are properly appointed in accordance with the Insurance Code.

The Department licenses natural persons to transact life, health, variable annuity, property, casualty (liability), surety, and miscellaneous lines of property and casualty insurance. Corporations, firms, and agencies are not required to be licensed, but all insurance agencies must be in the active, full-time charge of a licensed and appointed insurance agent in order to market insurance.

The Department is statutorily authorized to require an insurance agency to obtain a license as a result of disciplinary action taken against one or more agents associated with the agency.

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NFIP Policy Issuance Bulletin 6-96. The National Flood Insurance Program (NFIP) released Policy Issuance Bulletin 6-96 regarding coverage for cooperatives and timeshares. The following is a reprint of that bulletin:

Federal Emergency Management Agency Washington, D.C. 20472

NATIONAL FLOOD INSURANCE PROGRAM (NFIP)
POLICY ISSUANCE 6 - 96

Subject: Coverage for Cooperatives and Timeshares

Background:

There have been a number of questions over the past year concerning the coverage provided by the NFIP for cooperative and timeshare buildings, specifically, whether they are considered as being residential or non-residential, and whether they are eligible for coverage under the Residential Condominium Building Association Policy (RCBAP).

An owner in a cooperative building does not receive a real estate interest in a unit, but rather a share of stock in a corporation with the right to occupy a particular unit.

Timeshare buildings basically fall into two categories: those where a real estate ownership interest has been conveyed, and those where just the right to the use of a unit has been conveyed.

Policy Statement:

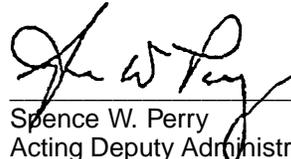
Cooperative buildings where at least 75% of the area of the building is used for residential purposes are considered as residential occupancies under the NFIP, and can be insured for a maximum building coverage of \$250,000 in a Regular Program community. Since they are not in the condominium form of ownership, they cannot be insured under the RCBAP. They must be insured under the General Property Policy (GPP).

Timeshare buildings not in the condominium form of ownership where at least 75% of the area of the building is used for residential purposes are considered as residential occupancies under the NFIP, and can be insured under the GPP for a maximum building coverage of \$250,000 in a Regular Program community.

Timeshare buildings in the condominium form of ownership are eligible for coverage under the RCBAP. These buildings are subject to the same eligibility, rating, and coverage requirements as other condominiums including the requirement that 75% of the area of the building be used for residential purposes.

Apr 9, 1996

DATE



Spence W. Perry
Acting Deputy Administrator
Federal Insurance Administration

— Title Insurance —

The Florida Statutes and applicable Department of Insurance Rules provide for statistical data to be collected and analyzed to determine the condition of the title industry on a triennial basis. The call has been made and data is being received. An actuarial consultant will analyze the data and submit a final report to the Department.

An encouraging factor in this call is the input and cooperation of the Real Property, Probate and Trust Section of the Bar. Hopefully, in the future, more of the attorney agents will provide input into this project. It is important to have all the data collected in order to produce meaningful results.

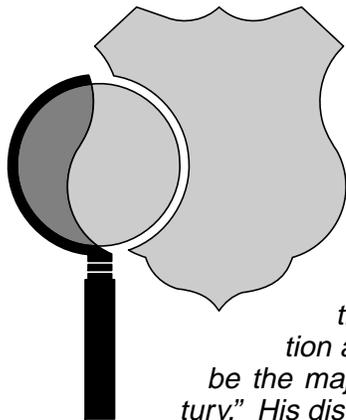
It is anticipated that the data call will be made annually. We expect all affected parties to be in a position to

provide complete data by the 1997 calendar year for the 1998 call.

Many lenders are requesting a "First Lien Letter," apparently on a national basis. This is not an approved form in Florida and should not be issued.

Keep in mind that the Florida Form 9 Endorsement should neither be modified to eliminate Oil, Gas and Mineral rights language, nor should any endorsement be issued insuring over an O, G, M reservation. Many lenders are requesting modification of Oil, Gas and Mineral issues. We ask that all requests be sent to the Department. Please address your correspondence to Wally Senter, Department of Insurance, 200 E Gaines St, Tallahassee, FL 32399-0326.

Division of Insurance Fraud



About the Director

The Division of Insurance Fraud operates under the leadership of Colonel Ron Poindexter. The new Director joined the Department of Insurance in June of this year. Colonel Poindexter states that "the stealing of information and other types of fraud will be the major crimes of the next century." His distinguished law enforcement background and record of excellence provide the know-how necessary to lead the Division in the fight against insurance fraud in Florida. Managing the responsibilities of the Fraud Division demands strong interaction and cooperation among federal, state and local law enforcement agencies; Colonel Poindexter acts as liaison for these counterparts.

The Division of Insurance Fraud encompasses 108 law enforcement employees located in ten regional offices throughout the state. Its sworn officers investigate and arrest those who commit insurance-related crimes, including claims fraud and illegal acts by agents and adjusters. Another 30 staff members work exclusively on workers' compensation fraud cases.

Recent issues of *The Intercom* have included articles on the functions of the Bureau of Workers' Compensation Fraud, which is a unit within the Division of Insurance Fraud. The focus of this review is the Unlicensed Entities Section (UES)—another unit within the Division of Insurance Fraud.

Named for the entities they investigate, the Unauthorized Entities Section tackles those insurers in Florida that organize insurance operations with no intention of obtaining a certificate of authority or providing proper insurance coverage for consumers.

The Unauthorized Entities Section, together with the Division's criminal investigators, the Florida Statewide Prosecutor, the Federal Bureau of Investigation, and the US Attorney's Office, works to eliminate the unauthorized sale of insurance and to prosecute those who engage in insurance fraud. The UES is charged with detecting, investigating, and filing civil actions to cease and desist, obtain monetary fines, and prosecute the principals associated with unauthorized entities.

The majority of unlicensed companies are domiciled in other countries; many times in one of the Car-

ibbean islands. Establishing an off-shore base is often an attempt to avoid state insurance regulation and legal jurisdiction for civil or criminal actions.

Most UES complaints are submitted through the Division of Consumer Services. Typically, consumers contact the Department to file a complaint against an unauthorized company for failure to pay their claims, or agents query the Department to determine if they may market insurance for the entity. The initial investigation of possible unauthorized activity then begins. The investigative process often reveals that unauthorized activity is occurring in other states as well. Information is shared and disseminated to other state regulators, state and federal law enforcement agencies, and international agencies to track the activities of these companies.

Individuals who set up unauthorized companies are usually not agents. Some are career perpetrators of fraudulent insurance operations. However, resident and nonresident agents who solicit or market unauthorized insurance are subject to Sections 626.901 and 626.902, Florida Statutes, which contain civil and criminal penalties and Administrative Rule Chapter 4-136.017 of the Florida Administrative Code, known as the "Safe Haven Rule." Moreover, in 1995, the marketing and sale of unauthorized insurance, already a third degree felony, became a predicate act for Racketeer Influenced and Corrupt Organization (RICO) prosecution; a first degree felony.

WARNING

RESIDENT AND NON-RESIDENT AGENTS RISK LOSING THEIR LICENSE WHEN THEY SOLICIT FOR AN UNAUTHORIZED ENTITY.

The following are recent examples of unlicensed insurers attempting to do business in Florida:

- 1) **Thorndyke International, Inc.** of Novato, California, is a plan administrator for a group health benefit program being offered as "The ERISA Advantage." Several state departments of insurance have filed cease and desist orders against this alleged ERISA plan.
- 2) **North American Marine and General Insurance Company, Ltd (NAMG)** is a carrier that writes marine insurance for boats and other watercraft. This unlicensed company operates through a managing

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Division of Insurance Fraud

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company from Quebec, Canada. It is a rollover of American Fire & Marine Insurance Company, Ltd. and Monarch Insurance Company, Ltd. Neither of these companies were licensed by the Florida Department of Insurance.

3) **Armada Assurance Limited** is an unauthorized insurance company registered in the Island of St. Vincent, but is conducting business through Tri-Continental Exchange of British Columbia, Canada. This carrier offers its clients an unusual and possibly illegal method of premium payment. Clients/Insureds pay premiums in both cash and "barter trade dollars."

4) **American Diversified Insurance Company (ADIC)** is writing both surety bonds for contractors and marine hull and liability insurance in Florida. Several complaints have been filed against this unlicensed insurer for the non-payment of claims. ADIC states that it is "duly filed and approved" by the Ministry of Finance in St. Johns, Antigua.

Agents contacted by representatives of the above-listed companies are urged to call Denise Prather at (904) 413-4036. If you suspect other entities are operating without proper authorization, please report them to Ms. Prather at the same number.

To determine whether or not an insurer is authorized in Florida, please call the Department toll-free at 1-800-342-2762.

UNAUTHORIZED ENTITY CASE SUMMARIES

(The following summaries provide an update on the referenced cases.)

EMPLOYERS' RESOURCE MANAGEMENT. On July 23, 1996, UES obtained a \$25,000 fine from Employers' Resource Management (ERM), an employee leasing company that operated in Florida and 34 other states. ERM claimed an ERISA exemption from the Florida Insurance Code under the guise of a single employer for its self-insured health plan. However, the facts suggested that ERM did not qualify as an exempt single employer. Its workers were actually employed by various employers who had the ability to hire, fire, etc. Therefore, ERM was providing unauthorized, self-insured health insurance to its many employees. At one time, ERM had several hundred employees in Florida—literally thousands nationwide—who were covered through this unlicensed insurer.

The court ruled that ERISA provided no protection for ERM. This left ERM no option other than to settle or appeal. The settlement stipulates that ERM will either obtain traditional health coverage with an approved company or refrain from offering health care coverage, and pay the \$25,000 fine to the Department.

Since the initial filing of legal proceedings by UES, several of the other 34 states have followed suit and filed against ERM. UES has provided assistance to fellow regulators when requested.

INDEMNITY CASUALTY & PROPERTY INSURANCE COMPANY (ICP). ICP is an unauthorized insurance carrier that marketed marine insurance on small vessels in Florida. The company is based in Houston, Texas. Mark and Kenneth Burroughs, a father and son, owned and operated ICP. The Burroughs acted as underwriters, marketers, adjusters, administrators and agents for this entity.

The Texas Department of Insurance issued several cease and desist orders against ICP; the latest permanent order was effective January 17, 1996. UES also issued a cease and desist order against ICP on January 18, 1996. However, ICP and the Burroughs refused to honor the Department's order. They continued to place marine insurance in Florida in violation of both the Texas and Florida orders.

As a means to force ICP to stop transacting insurance in Florida, UES obtained a search warrant through the Texas Office of the District Attorney and the Florida Statewide Prosecutor's office. The search produced sufficient evidence for a Texas state grand jury to indict both Mark and Kenneth Burroughs for "intentionally and knowingly engaging in the business of insurance without specific authorization of statute."

Evidence also revealed that the Burroughs had organized a new, illegal, offshore insurance company called International Marine Underwriters (more on this company in the succeeding summary). The Texas Special Prosecutor is currently analyzing financial documents and conducting grand jury proceedings to include additional counts of theft and/or fraud.

The UES attorney is working with the Florida Statewide Prosecutor's Office for a possible Racketeer Influenced and Corrupt Organization Act (RICO) prosecution. Section 895.02, F.S., defines a violation of Sections 624.401 and 626.902 (1) (b) as a RICO predicate as of July 1, 1995.

INTERNATIONAL MARINE UNDERWRITERS. In the early part of May 1996, the Department received complaints from various sources advising that a Bermuda-based

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Division of Insurance Fraud

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insurer known as International Marine Underwriters was soliciting marine insurance on small vessels to Florida commercial watersports operators. An Arizona entity known as Marine Specialty Management Services, acting as the manager and agent of the company, was in its earliest stages of marketing the coverage in Florida.

Managers of Marine Specialty Management Services were cooperative when contacted by UES, and

in July 1996 a settlement was signed and executed which stipulated the following: Any policy that was written would be cancelled flat and a full refund would be granted to the insureds, no further unauthorized insurance would be transacted in Florida, and a \$5,000 fine would be paid to the Department.

UES has recently learned, however, that International Marine Underwriters may still be marketing marine coverage in Florida. This is in direct violation of the settlement stipulation. If you have any information regarding such activity, please contact Denise Prather at (904) 413-4036. ■



NEW FLORIDA COMPANIES

American Medical HealthCare was authorized as a Florida HMO on 7/1/96. Address: 1900 Summit Tower Blvd., Suite 700, Orlando, FL 32810; telephone (407)660-1611.

Companion Property & Casualty Insurance Company was authorized on 2/29/96. Lines of business: Fire, Allied Lines, Homeowners Multi Peril, Commercial Multi Peril, Inland Marine, Earthquake, Workers Compensation, Other Liability, Commercial Automobile Liability, Commercial Auto Physical Damage, Fidelity, Surety, Glass, Burglary and Theft, Boiler and Machinery, Credit. Address: P. O. Box 100165, Columbia, SC 29202; telephone (803)735-0672.

Southern Family Insurance Company was authorized on 8/16/96. Lines of business: Homeowners Multi Peril. Address: 511 Bay St., Suite 400, Tampa, FL 33606; telephone (813)259-4000.

Preferred America Insurance Company was authorized on 2/29/96. Lines of Business: Commercial Multi Peril, Other Liability. Address: 830 N. Meacham Rd., Schaumburg, IL 60173; telephone (708)330-0200.

American Medical Security Insurance Company was authorized on 7/1/96. Lines of business: Group Life and Annuities, Accident and Health. Address: P. O. Box 19032, Green Bay, WI 54307; telephone (414)431-1111.

Capital Security Life Insurance Company was authorized on 1/16/96. Lines of business: Life, Group Life and Annuities, Accident and Health. Address: P. O. Box 32830, Louisville, KY 40232; telephone (502)560-2000.

Allstate Floridian Insurance Company was authorized on 7/23/96. Lines of business: Fire, Allied Lines, Homeowners Multi Peril, Commercial Multi Peril, Inland Marine, Earthquake, Other Liability, Private Passenger Auto Liability, PPA Physical Damage, Commercial Auto Physical Damage, Glass, Burglary and Theft, Mobile Home Multi Peril, Mobile Home Physical Damage. Address: 3075 Sanders Rd., Suite H1A, Northbrook, IL 60062; telephone (847)402-5000.

Oxford Health Insurance, Inc. was authorized on 7/2/96. Lines of business: Accident and Health. Address: P. O. Box 5031, Norwalk, CT 06856; telephone (203)852-1442.

Florida Select Insurance Company was authorized on 8/16/96. Lines of business: Fire, Allied Lines, Homeowners Multi Peril, Earthquake, Other Liability, Burglary and Theft, Glass, Industrial Fire, Mobile Home Multi Peril, Mobile Home Physical Damage. Address: P. O. Box 49768, Sarasota, FL 34230; telephone 1-888-700-9101.

Champion HealthCare, Inc. was authorized as a Florida HMO on 8/27/96. Address: 7406 Fullerton St, Suite 200, Jacksonville, FL 32256; telephone (904)781-0900.

Florists' Insurance Company was authorized on 9/6/96. Lines of business: Homeowners Multi Peril, Commercial Multi Peril, Inland Marine, Earthquake, Fidelity, Glass, Burglary and Theft, Boiler and Machinery. Address: 500 St. Louis St, Edwardsville, IL 62025; telephone (618-)656-4240.

National Grange Mutual Insurance Company was authorized as an eligible surplus lines insurer on 9/18/96. Address: 55 West St., Keene, NH 03431; telephone (603)352-4000.

Capital Title Reinsurance Company was authorized as an approved reinsurer on 9/18/96. Address: 1325 Avenue of the Americas, New York, NY 10019; telephone (212)974-0100.

Attorneys' Liability Assurance Society, Inc. was authorized as a risk retention group in Florida on 8/16/96. Address: 140 Kennedy Dr., South Burlington, VT 05403.

American Medical Mutual, Inc. was authorized as a foreign risk retention group in Florida on 7/1/96. Address: P.O. Box 64649, 346 Shelburne Rd., Burlington, VT 05406; telephone (802)658-1474.

Beacon Health Plan, Inc. was authorized as a Florida HMO on 8/19/96. Address: 2511 Ponce de Leon Blvd., 5th Floor, Coral Gables, FL 33134; telephone (305)445-4363.



INFORMATIONAL BULLETIN 96-003

September 26, 1996

Florida Department of Insurance

Bill Nelson

Treasurer, Insurance Commissioner and Fire Marshal
All Property and Casualty Insurers Authorized to Do Business in Florida
Wind and Hurricane Deductibles

Legislative amendments to Section 627.701, Florida Statutes, require insurers to replace wind deductibles with hurricane deductibles. This bulletin highlights the amended language which warrants your immediate attention.

I. HURRICANE DEDUCTIBLES AND REQUIRED FILINGS

Insurers will be required to offer hurricane deductibles instead of wind deductibles on the effective date of an insurer's first rate filing made after January 1, 1997. However, insurers are encouraged to file the new hurricane deductibles before the required date. If an insurer decides not to offer hurricane deductibles before the required date, it must nonetheless apply the new hurricane deductible amounts to its existing wind coverage.

Therefore, in order to comply with this statute, the insurer must do one of the following by November 15, 1996:

- a.) file new hurricane deductibles as summarized below or
- b.) file to amend existing wind deductibles to reflect the deductible amounts summarized below, followed by a subsequent filing on or after January 1, 1997, to transform the amended wind deductibles to hurricane deductibles.

II. REQUIRED NOTICE TO POLICYHOLDERS

The following forms must accompany the filings for either option listed above:

- a.) a notice to policyholder of available deductible alternatives and
- b.) a notice to policyholder specifying which deductible will be applied if policyholder fails to choose one.

ADDITIONAL DOCUMENTATION: For insurers choosing to file hurricane deductibles by November 15, 1996, a copy of the policy's declarations page must accompany the filings. The policy language for separate hurricane deductibles must meet the policy language requirements of Section 627.701(4), F.S. For more details on this requirement, please see Part V of this bulletin.

III. SUMMARY OF HURRICANE DEDUCTIBLES

Dwelling Limits	Minimum Deductible Allowed	Maximum Deductible Allowed**	Specific Mandatory Offerings
0-\$25,000	\$250.00	2%	N/A
25,000-50,000	\$250.00	2%	\$500 & 2%
50,000-100,000	\$500.00	2%	\$500 & 2%
100,000-250,000	\$500.00	5%	\$500 & 2%*
250,000-500,000	\$500.00	5%	2%
500,000 and up	\$500.00	unlimited	2%

*For houses valued between \$100,000 and \$250,000, an insurer need not offer the \$500 deductible if it guarantees it will not nonrenew to reduce potential loss from hurricanes for one additional renewal period.

** 3% maximum deductible allowed for commercial lines residential coverage for all values.

NOTE: Policies issued on or after April 1, 1997, must offer a \$500 deductible for all perils other than hurricane.

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INFORMATIONAL BULLETIN (Continued from page 6)

Notwithstanding the new hurricane deductible limits summarized above, an insurer may require higher deductibles than shown if:

- a.) a risk was covered on August 24, 1992, under a policy having a higher deductible than that allowed by the new limits or
- b.) the higher deductible is the same as or similar to a deductible program lawfully in effect on June 14, 1995.

IV. MOBILE HOME DEDUCTIBLES

Prior to issuing or renewing a mobile home property insurance policy on or after May 21, 1996, hurricane deductibles must meet the following requirements:

- a.) may not exceed 5% (five percent) of the property value if the property is subject to any liens and
- b.) may not exceed 10% (ten percent) of the property value if the property is not subject to any liens.

V. REQUIRED POLICY LANGUAGE FOR HURRICANE DEDUCTIBLES

Insurers filing new hurricane deductibles should note that any policy containing a separate hurricane deductible must on its declarations page include in boldfaced type no smaller than 18 points the following statement:

"THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU." Section 627.701 (4), F.S.

A policy containing a coinsurance provision applicable to hurricane losses must on its face include in boldfaced type no smaller than 18 points the following statement:

"THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU." Section 627.701 (4), F.S.

If you have questions about this bulletin, please contact Reuben Hamlin, Bureau Chief of Property and Casualty Forms/Rates, at (904) 413-5310. ■

CASE NOTES

- 1) Earlier this year, the Department learned of the arrest of an insurance agent for the murder of an elderly insurance client. The apparent motive for the murder resulted from the agent's involvement in misappropriating money from the victim's annuity account. The Department immediately issued an Emergency Order of Suspension alleging murder and misappropriation of funds. The Order was effective in suspending the agent's authorization to solicit or sell insurance; the suspension will remain effective until final disposition of the criminal case. If found guilty, the agent's license will be revoked.
- 2) An investigation of a complaint received by the Department revealed that a claims adjusting company had failed to properly appoint its adjusters. The adjusters were licensed, but not appointed with the adjusting company. Florida Statutes provide that both licensees and their employing companies share in the responsibility for ensuring compliance with licensure and appointment requirements. A final order has been issued in the cases of two of the adjusters. A fine of \$500 and one year's probation were assessed. Administrative action against others involved is pending.
- 3) The Department was recently notified that a nonresident life and health agent's company appointment was being terminated for cause. Such notices routinely initiate a Department investigation. The indictment against the agent alleged organized criminal activity involving an unlicensed health insurance operation that preyed on churches and missionaries. Court documents disclosed that the agent had been convicted of misapplication of fiduciary property over \$10,000. Judgment in the case rendered a sentence of five years' imprisonment and a \$10,000 fine. Section 626.611, F.S., provides for compulsory revocation of an agent's licenses after having been found guilty of or having pleaded guilty or nolo contendere to a felony involving moral turpitude. The Department issued an Order of Revocation cancelling the agent's right to solicit or sell insurance in the State of Florida.
- 4) Following a complaint referred from the Tampa Service office, an investigation was initiated by the Department pertaining to the alleged misappropriation of premium funds by a general lines agent. The investigation revealed that the agent had received down-payment, premium checks and then issued premium finance drafts to herself in the amount of approximately \$45,000. An Emergency Order of Suspension was issued by the Department, but the agent ignored the Order and continued "business as usual." The agent was subsequently arrested by the Division of Insurance Fraud and charged with Grand Theft. A sentence of 180 days in county jail, 100 hours of community service, full restitution of funds to all known victims, and 10 years' probation was handed down. At the request of the Department of Insurance, the sentencing judge also suspended the agent's license for the duration of her probation. Since the finding of guilt on the part of the agent, further victims have been identified. The agent will be charged again upon completion of her current sentence.

The following Department of Insurance rules, regulating the sale of annuities in association with financial institutions, became effective March 31, 1996. The rules were promulgated in response to *NationsBank of North Carolina, N.A., et al. v. Variable Annuity Life Insurance Co. et al.*, ___ U.S. ___, 115 S.Ct 810 (1995), which upheld the authority of national banks to sell annuities.

CHAPTER 4-223 SALE OF INSURANCE IN ASSOCIATION WITH FINANCIAL INSTITUTIONS

PART V SALE OF ANNUITIES BY FINANCIAL INSTITUTIONS.

4-223.019 Purpose and Scope of Part V.

(1) This part of this rule chapter governs the sale of annuities by or in association with financial institutions. This part is premised upon the proposition that national banks are authorized to sell annuities in Florida pursuant to 12 U.S.C. 24 Seventh, as interpreted in *NationsBank of North Carolina, N.A., et al. v. Variable Annuity Life Insurance Co. et al.*, ___ U.S. ___, 115 S.Ct 810 (1995). This authorization triggers the limited exception in Section 626.988(8), Florida Statutes, enabling Florida chartered banks, savings and loan associations, and savings banks, and federally chartered savings and loan associations and savings banks to sell annuities in a manner consistent with the Florida Insurance Code, but notwithstanding the prohibitions of 626.988, Florida Statutes.

(2) If there is a change in federal statutory or case law which attenuates the authorization of national banks to sell annuities in Florida pursuant to 12 U.S.C. 24 Seventh or other federal law as interpreted in *NationsBank of North Carolina, N.A., et al. v. Variable Annuity Live Insurance Co. et al.*, ___ U.S. ___, 115 S.Ct 810 (1995), the prohibitions in Section 626.988, Florida Statutes, will again apply to annuities, and this part will be inapplicable.

(3) This rule interprets Section 626.988, Florida Statutes, and other provisions of the Insurance Code applicable to the marketing of annuities. It is not an acknowledgment of any preemption of any portion of the Florida Insurance Code by federal law.

Specific Authority 624.308 FS. Law Implemented 626.051, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.020 Notification to Department.

(1) Prior to marketing annuities, a financial institution shall provide notification to the Department on Form DI4-1179 (9/95), which is incorporated herein by reference, and can be obtained from the Bureau of Licensing, Division of Agent and Agency Services, 200 East Gaines Street, Tallahassee, Florida 32399-0319. The report shall:

(a) Identify any financial institution location where an agent will be physically present;

(b) Acknowledge that the financial institution has read and understands these rules; and

(c) Identify any insurance company and the policy form numbers of the annuities which will be marketed in association with the financial institution.

(2) An amended filing shall be submitted prior to or contemporaneously with any change in the information previously provided.

(3) The financial institution shall:

(a) Maintain a list of the name and address of each agent that is directly employed by the financial institution with respect to the marketing of annuities;

(b) Maintain a list stating the name and address of each agent, insurance agency, or in-

surance administrator or any other party with whom the financial institution contracts for the marketing of annuities;

(c) Maintain a list of each insurance company marketing annuities and the policy form numbers of annuities that will be marketed in association with the financial institution; and

(d) Make available to the Department immediately upon request the information required in this subsection.

Specific Authority 624.308 FS. Law Implemented 624.307, 626.988(8) FS. History - New 3-31-96.

4-223.021 Agent Licensing.

(1) Any individual soliciting, selling, or marketing annuities to individuals permanently or temporarily residing in this state must be licensed and appointed as an insurance agent whose license classification includes the sale of the type of annuities sold, in accordance with the provisions of the Florida Insurance Code.

(2) No licensed and appointed insurance agent shall, in association with or while on the premises of a financial institution, transact any lines of insurance other than annuities, except to the extent permitted by Section 626.988, Florida Statutes, and Rule Chapter 4-223, Florida Administrative Code. For purposes of this rule, 4-223.021, the term "financial institution" shall be as defined in Section 626.988, Florida Statutes. Specific Authority 624.308 FS. Law Implemented 626.051, 626.112, 626.784, 626.785, 626.988 FS. History - New 3-31-96.

4-223.022 Underwriting of Annuities Prohibited. A financial institution shall not itself directly or indirectly assume the obligation to provide the benefits of an annuity contract, or otherwise undertake to perform the obligations of an annuity contract.

Specific Authority 624.308 FS. Law Implemented 624.11, 624.401, 626.051, 626.988, 628.151(1) FS. History - New 3-31-96.

4-223.023 Annuities Sold On the Premises of Financial Institutions.

(1) If annuities are sold on the premises of a financial institution:

(a) Signs.

1. Signs shall be prominently posted in the office or area where annuities are sold which indicate with words and symbols that:

a. Annuities are not insured by the FDIC, NCUSIF, or any other federal entity;

b. The financial institution is not obligated to provide benefits under the annuity contracts;

c. The financial institution does not guarantee performance by the insurer issuing the annuity; and

d. If variable annuities are marketed, such annuities involve investment risk, including potential loss of principal.

2. Signs shall at a minimum be 1 foot square with words and symbols in at least 18 point type, as set forth in Form DI4-1177 (9/95), which is incorporated herein by reference and can be obtained from the Bureau of Licensing, Division of Agent and Agency Services, 200 East Gaines Street, Tallahassee, Florida 32399-0319.

3. Signs shall be placed so as to be readily visible to prospective annuity purchasers.

(b) Advertisements, applications, and contracts. Each advertisement of the annuity product, each application for the annuity, and each annuity contract shall contain or have attached

to the face thereof the wording and symbols indicated in Form DI4-1177 (9/95) in not less than 13 point type.

(c) Other than making referrals or appointments in accordance with Rule 4-223.025(5)(a), insurance agent services provided on the premises of a financial institution shall be conducted in a physical location clearly distinct from the area where the financial institution's retail deposits are taken. A sufficiently distinct area shall be a separately enclosed office or separately partitioned area which provides customer privacy and confidentiality unless a financial institution demonstrates that:

1. Such separate areas are impractical or cost prohibitive, or

2. The area used otherwise provides customer privacy and confidentiality.

(2) If any person conducts annuity transactions in offices or other areas of a financial institution used to conduct normal banking transactions, in addition to prominently displaying the signs described herein, all indicia of banking activities shall be removed from such office or area. Specific Authority 624.308, 626.9611 FS. Law Implemented 626.051, 626.112, 626.9541, 626.9611, 626.9641, 626.988(8), FS. History - New 3-31-96.

4-223.024 Insurer Reporting.

(1) Any insurer marketing fixed or variable annuities in association with one or more financial institutions shall report to the Department the existence of such program(s) and the volume of premium written when the gross annualized premium for the program or programs exceeds or is projected to exceed 10% of the total gross annual premium for annuities.

(2) The report shall be made on Form DI4-1178 (9/95), incorporated herein by reference and available from the Bureau of Life and Health Solvency and Market Conduct, Division of Insurer Services, 200 East Gaines Street, Tallahassee, Florida 32399-0327, and shall include:

(a) The program names;

(b) The name of the associated financial institutions;

(c) The form number of each annuity contract offered; and

(d) The annualized premium for each program and the total aggregate annualized premium from all programs associated with financial institutions.

(3) The report shall be refiled if there is a change in the program name, name of the associated financial institutions, or annuity contracts offered, or if the total annualized premium subsequently falls below the 10% threshold specified in (1) above.

(4) Form DI4-1178 can be obtained from, and after completion returned to, Bureau of Life and Health Insurer Solvency and Market Conduct, Division of Insurer Services, 200 East Gaines Street, Tallahassee, Florida 32399-0327. Specific Authority 624.308 FS. Law Implemented 624.307, 626.051, 626.988(8) FS. History - New 3-31-96.

4-223.025 Agent Activities.

(1) Only a licensed and appointed agent shall:

(a) Solicit the sale of annuities or describe the benefits of the annuity contract or otherwise

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describe the terms of coverage, including premiums or rates of return;

(b) Provide an application, enrollment form, or other document by which a purchaser effectuates coverage;

(c) Receive an application, enrollment form, or other document by which a purchaser effectuates coverage or otherwise takes such action as may be required to effectuate coverage on behalf of a purchaser;

(d) Receive an initial premium payment from the annuity purchaser; or

(e) Distribute an invitation to contract to prospective purchasers.

(2) In connection with the marketing of fixed or variable annuities, employees of a financial institution that are not licensed and appointed as insurance agents shall not:

(a) Make general or specific recommendations as to fixed or variable annuities;

(b) Qualify or screen a purchaser for such products or secure information necessary for the licensed agent to do so;

(c) Accept orders or applications for such products;

(d) Respond to questions from prospective purchasers regarding annuity products. Any individual seeking general or specific information about annuity contracts shall be advised as to the location of the licensed agent or otherwise advised as to how the agent may be contacted;

(e) Refer to fixed or variable annuities as anything other than annuities; or

(f) Refer to the licensed agent selling annuities as other than an insurance agent in a manner such that a prospective annuity purchaser does not know that the individual is an insurance agent. The term "account representative" or any title containing a variation of the term "account" shall not be used to refer to an insurance agent. If the agent is a licensed securities dealer or a chartered financial consultant, he may be identified as such, provided he is also identified as an insurance agent.

(3)(a) The licensed and appointed insurance agent shall be identified as an insurance agent on stationery and business cards used by the licensee and on other materials provided to the purchaser.

(b) If the agent is licensed as a securities broker, the additional license may be disclosed on the materials as well as in any verbal discussions with the annuity purchaser regarding annuity products, provided the marketer is also identified as an insurance agent.

(4) Co-employment.

(a) If employees of the financial institution that have contact with the general public or financial institution customers with respect to lending, checking, deposit taking, or trust activities are licensed as insurance agents to sell annuities, in addition to the other disclosures required by this section, the employee shall disclose verbally and in writing at the time a solicitation is made or an application is taken that the employee is acting as an insurance agent representing one or more specifically identified insurance companies, and that the annuity is not issued or guaranteed by the financial institution. A licensed employee of a financial institution who engages in annuity sales to customers of the financial institution shall not participate in lending determinations made by the financial institution.

(b) If unlicensed financial institution employees that have contact with the general public or financial institution customers with respect to lending, checking, deposit taking, or trust activi-

ties perform any activity permitted under Rule 4-223.025(5)(a), those persons shall disclose orally at the time of contact that the customer will be meeting with an insurance agent regarding an annuity offered by an insurance company.

(c)1. The written disclosure required in this subsection shall be set forth in a separate written document.

2. One copy of the disclosure shall be given to the customer and one copy, signed by the customer and acknowledging receipt of the disclosure, shall be retained by the financial institution.

(d) An individual may not perform services in connection with the insurance agency in conjunction with any appointment or meeting with any consumer involving the lending, deposit taking, checking, or trust activities of the financial institution.

(5)(a) Unlicensed employees may make appointments for and refer prospective annuity purchasers to a licensed agent, but in doing so shall not perform any activities requiring agent licensure.

(b) No employee of a financial institution that is not licensed as an agent to sell annuities shall directly or indirectly receive any compensation or consideration from an agent, insurance agency, the financial institution, or any affiliate of a financial institution, based upon referral of potential annuity purchasers to or making appointments with a licensed agent. However, inasmuch as it has been judicially determined that national banks may broker annuities and that annuities do not constitute insurance in the context of permitting such activity, financial institution employees may receive from the financial institution a one-time nominal fee of a fixed dollar amount for each customer referral for annuity products, provided the financial institution pays referral fees for other investment products and the fee paid for annuity referrals is not greater than the fee paid for other investments. The payment of any amount pursuant to this rule may not depend upon whether the referral results in a transaction, and shall not be directly or indirectly paid by the insurer or its agent marketing annuities.

(c) No agent shall directly or indirectly share his commission with, or provide any consideration or compensation to, an unlicensed person for activities which contribute to the effectuation of annuity contracts.

(6) This rule is not intended to preclude the exception created in section 626.112(7), Florida Statutes.

Specific Authority 624.308, 626.9611 FS. Law Implemented 626.0428, 626.051, 626.112, 626.794, 626.9541, 626.9641, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.026 Primary Agent.

(1) The conduct of annuity transactions in association with a financial institution shall be subject to the requirements of Section 626.592, Florida Statutes.

(2) Each location where a licensed and appointed insurance agent is engaged in transactions with respect to annuity products shall be considered an insurance agency for purposes of Section 626.592, Florida Statutes. However, in those instances where an agent conducts annuity transactions at two or more locations, a separate primary agent need not be designated at each location, provided that no annuity transactions occur at any location when the agent is not present and no unlicensed employee at the location has engaged in insurance activities requiring licensure, except for those specifically permitted in Rule 4-223.025(5)(a). In such instances

the agent shall be responsible for annuity transactions occurring at each location.

Specific Authority 624.308 FS. Law Implemented 626.031, 626.0428, 626.051, 626.094, 626.112, 626.592 FS. History - New 3-31-96.

4-223.027 Premium Collection.

(1) No person other than a licensed agent may accept any premium payments for an annuity contract.

(2) A financial institution may, however, subsequent to the payment of the initial premium and at the request of the annuity purchaser, process pre-authorized checks or debit the purchaser's checking account or credit arrangement for the payment of annuity premiums.

(3)(a) If provided to individuals purchasing annuities marketed in conjunction with financial institutions, pre-authorized check processing and automatic debit services shall be provided on the same basis to customers purchasing annuities from insurers not associated with the financial institution.

(b) If requested by the annuity purchaser or insurer to discontinue premium payment, the financial institution shall immediately discontinue such debits.

Specific Authority 624.308, 626.9611 FS. Law Implemented 626.031, 626.051, 626.112, 626.9541, 626.9561, 626.9641, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.028 Commission Sharing.

(1)(a) An insurance agent shall not directly or indirectly through an agency or other person share any commission resulting from the sale of annuity contracts with a financial institution.

(b) A financial institution shall not receive any such commission unless:

1. The financial institution establishes a separate corporation that acts as an insurance agency;

2. All employees or principals of the agency who solicit, negotiate, or effectuate annuity contracts are licensed and appointed as life including variable annuity agents; and

3. The corporation has an officer or director who is licensed and appointed as a life including variable annuity insurance agent.

(c) If a financial institution establishes an insurance agency, regardless of whether the agency is located on the premises of the financial institution, advertisements, applications, and contracts shall be subject to the requirements of Rule 4-223.023(1)(b).

(2) No insurer shall pay directly or indirectly any compensation or other consideration to a financial institution for activities relating to the marketing or effectuation of annuity contracts which is dependent upon the volume of contracts sold or premiums written unless the financial institution establishes a separate insurance agency as described in (1) above.

(3) Any lease of space by a financial institution to an insurance agent under which the amount of the rent is based directly or indirectly on the volume of premium written by the insurance agent entails the sharing of commission. Specific Authority 624.308 FS. Law Implemented 626.794 FS. History - New 3-31-96.

4-223.029 Compensation of Agents.

Licensed and appointed agents shall be paid only by an insurer or an insurance agency or a licensed insurance administrator for their activities in connection with the marketing of annuities. Specific Authority 624.308, 626.9611 FS. Law Implemented 624.428, 626.051, 626.9541, 626.9641, 626.988(8), 628.151(1) FS. History - New 3-31-96.

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4-223.030 Access to Records and Premises.

(1) An insurance agent marketing annuities is responsible for maintaining such records as are necessary to enable the Department to determine that transactions under the insurance agent's license comply with all applicable requirements of the Insurance Code, and for making those records available to the Department.

(2) If the licensed insurance agent markets other products, provides other services, or maintains other information regarding the customer which relates to other than annuity transactions, all records relating to annuity transactions shall be separately maintained.

(3) If records relating to the annuity transactions are maintained by the agent on premises owned by a financial institution, the agent and the financial institution shall provide access to such records during times when the financial institution is open to the public.

(4)(a) The terms of any contract or agreement between the financial institution and any insurance agent or other person conducting transactions regarding the marketing of annuities who is not an employee of the financial institution shall be in writing and available for inspection by the Department.

(b) If an agent, agency, or other person is conducting transactions with regard to annuities marketed in conjunction with a financial institution and is not an employee of the financial institution, the terms of any contract or agreement between such person and the producing agent or other person relating to such activities shall be in writing and available for inspection by the Department.

(c) If there is any contract between an insurance company and a financial institution with regard to an annuity product marketed in conjunction with a financial institution, such contract shall be in writing and available for inspection by the Department.

Specific Authority 624.308 FS. Law Implemented 624.307, 624.316, 624.316(1), 624.318, 624.318(2), 626.051, 626.561(2), 626.601(2), 626.9561, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.031 Insurance Administrators.

(1) Any person providing any services described in Section 626.88(1), Florida Statutes, in connection with annuities marketed in association with financial institutions shall be licensed with the Department as required by Section 626.8805, Florida Statutes.

(2) The administrator shall notify the Department of each such relationship and identify the specific financial institution as well as the insurer represented and the form number(s) of annuity contracts involved.

(3) The notification shall be sent to Bureau of Specialty Insurers, Florida Department of Insurance, Larson Building, Tallahassee, Florida 32399-0326.

Specific Authority 624.308 FS. Law Implemented 624.307, 624.317, 626.051, 626.601, 626.8805, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.032 Advertising.

(1) Advertisements of fixed and variable annuities marketed pursuant to this rule chapter shall be subject to the provisions of Part II of Rule Chapter 4-150, Florida Administrative Code.

(2) No licensed or unlicensed person shall in connection with the marketing of annuities refer to coverage afforded by the Florida Life and Health Insurance Guaranty Association.

(3)(a) The financial institution shall not itself solicit annuity contracts or on its own behalf send solicitation materials, including advertisements.

(b) All communications sent to an annuity purchaser or prospective annuity purchaser from an agent or insurer must clearly reflect that the source of the communication is not the financial institution.

(c) However, if the insurance agent is an employee of the financial institution, he may be identified as representing both the financial institution and the insurer.

(4)(a) Advertising materials describing annuity products sold through financial institutions shall clearly state that the annuity is not insured by a federal agency or backed by the financial institution itself.

(b) Subject to the requirements of Rule Chapter 4-150 and Part III of Rule Chapter 4-223, financial institutions may provide information regarding annuities in brochures and other communications that advertise other financial products that may permissibly be sold or distributed by the financial institution.

(5)(a) Advertisements of annuities are the responsibility of the insurer and must be approved by the Department prior to use.

(b) If an advertisement describes annuity products and other types of financial services or investments, the entire advertisement must be submitted to the Department in the form in which it will be communicated to consumers.

(6)(a) Advertisements directed to prospective or existing annuity purchasers shall be from the agent or insurer.

(b) If annuity advertisements directed to prospective purchasers are included in mailings of bank statements or other documents generated by the financial institution relating to products or services provided by the financial institution, the mailings shall clearly identify the separate sources of the materials.

(7)(a) Premium notices, notices of cancellation, renewal notices, or other similar communications relating to in-force annuities shall originate with an insurance agent, insurance company, insurance agency, or third party administrator, and shall be separate from financial institution account communications.

(b) A financial institution may provide a statement indicating the value of an annuity contract marketed in conjunction with the financial institution. If the statement includes statements regarding checking, savings, or trust accounts, certificates of deposit, or other banking products or services, then the annuity statement shall be clearly separated under a separate heading. There shall be disclosure on the statement that the annuity is not insured by the federal government and is not the obligation of the financial institution.

(8) Advertisements of annuity products shall include affirmative disclosures that the financial institution is not responsible for any of the obligations of the annuity contract.

(9)(a) Neither the name nor the logo of the financial institution and any third-party agent, marketer, or insurer of an annuity contract shall be identical or so similar as to cause confusion on the part of annuity purchasers or prospective annuity purchasers as to the separate identities, responsibilities, or activities of the parties.

(b) If the financial institution establishes an insurance agency, the name and logo of the agency must be distinct from those of the financial institution, unless all advertisements and communications from the agency or its employees to existing or prospective annuity purchasers dis-

close the existence and nature of the relationship, reflect the separate identities and activities of the parties, and clearly indicate that the agency is responsible for the annuity transactions.

(10) If the product or program name under which an annuity contract is marketed includes the name of a financial institution, or the name of a program associated with the financial institution, the product or program name must also identify the insurance company that is issuing the annuity contract.

(11) Advertisements of annuities shall contain affirmative disclosures that the annuities are not insured by the FDIC, NCUSIF, or any other federal entity.

(12)(a) The product or program name under which an annuity contract is marketed shall not include the word "account."

(b) Premiums shall not be referred to as "deposits."

(c) Terminology used in connection with annuity contracts must be sufficiently different from that used in connection with traditional banking products and services as to avoid confusion.

(13)(a) An unlicensed employee of a financial institution may distribute a Department-approved advertisement describing an annuity product to a prospective annuity purchaser or may refer a customer to a display containing such advertisements.

(b) However, that employee shall not recommend the purchase of an annuity, describe the features of an annuity, or respond to questions regarding the content of the advertisement. In response to any questions, the employee must indicate that the consumer should pose all questions to the agent identified in the advertisement. Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307, 626.051, 626.112, 626.9541, 626.9641, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.033 Disclosures to Prospective and Existing Annuity Purchasers.

In addition to the requirements of these rules, any financial institution associated with the marketing of annuities shall make those disclosures to prospective and existing annuity purchasers which are described in, and shall otherwise comply with the requirements established by, the February 15, 1994, Interagency Statement On Retail Sales of Nondeposit Investment Products issued jointly by the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision, which is incorporated herein by reference.

Specific Authority 624.308 FS. Law Implemented 626.051, 626.9541, 626.9641, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.034 Joint Announcements.

Except to the extent inconsistent with the provisions of this part which permit financial institution employees to be licensed as insurance agents and permit a financial institution to establish a separate corporation acting as an insurance agency, endorsements, announcements, or advertisements of annuities by a financial institution in conjunction with an agent or insurer, communicated to financial institution customers or prospective customers by direct mail or otherwise, shall be subject to the requirements of Part III of Rule Chapter 4-223, Florida Administrative Code.

Specific Authority 624.308, 626.9611 FS. Law Implemented 626.051, 626.9541, 626.9641, 626.988(8), 628.151(1) FS. History - New 3-31-96.

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OPENING AN INSURANCE AGENCY? *Continued from page 1*

Q **Must the Department approve the name of my agency?**

A Department approval of the name chosen for an insurance agency is not a requirement. However, the use of a name that would be misleading in any way should be avoided. Names chosen should not imply that the agency is an insurance company, governmental agency, or other national or state organization.

Q **To open an agency, am I required to file any forms with the Department?**

A Yes. Section 626.541, FS, requires any licensed agent or adjuster doing business under a firm or corporate name or under any business name, other than his or her own individual name, to file **Form DI4-63/64 (Revised 2/93), "Designation of Primary Agent for Insurance Agency And Primary Adjuster for Adjusting Firm; And Filing of Firm, Corporation or Business Name,"** with the Department on or before January 1 of each year. Completion of this form requires disclosure of the name being used, the address of any office or offices or places of business making use of such name, the name and Social Security number of each director and the president of the corporation, and of each individual associated with such firm or corporation as to the insurance transactions thereof or in the use of such business name.

If changes occur in the information provided on Form DI4-63/64 (Revised 2/93) during the one-year filing period, notice of such change(s) must be forwarded to the Department within 60 days. Failure to notify the Department of these changes is a statutory violation and may subject the licensee to disciplinary actions.

On a related matter, Section 626.551, FS, requires every licensee to notify the Department in writing within 30 days if the licensee changes his or her name, residence address, principal business street address, or mailing address. (See "Name/Address Change" on page 16.)

Q **Is each agency required to designate a primary agent?**

A Yes. Section 626.592, FS, requires each person operating an insurance agency and each location of a multiple location agency to designate a primary agent for each Florida location. This requirement is also applicable to adjusting firms. (Refer to Florida Statutes, ss. 626.592 for agents and ss. 626.8695 for adjusters.)

To designate a primary agent, use Form DI4-63/64 (Revised 2/93). This form serves a dual purpose. It will satisfy the filing requirements for the primary agent or adjuster designation and the filing of a firm or corporate name, pursuant to Sections 626.541 and 626.592, FS.

Q **How may I obtain and file Form DI4-63/64?**

A The form can be obtained by writing or calling the Bureau of Agent and Agency Licensing. Correspondence should be addressed to 200 E. Gaines Street, Tallahassee, Florida 32399-0318; or telephone the Bureau of Licensing at (904) 922-3137, Extension 1100. The completed form should be returned to the same address. Instructions for completing and returning the form are shown on the reverse side (copy included in this issue - pages 13 & 14).

Q **I am a general lines (property & casualty) insurance agent (2-20). If I open a branch general lines insurance agency, am I authorized to act as the full-time, general lines agent in charge of each agency location?**

A No. Section 626.747, FS, requires each branch place of business established by an agent or agency, firm, corporation, or association to be operated by an active, full-time, licensed, general lines agent who is appointed to represent one or more insurers. Any agent or agency, firm, corporation, or association that has established one or more branch places of business shall be required to have at least one agent at each location of the agency, including the headquarters' location.

Q **May commissions be paid to my insurance agency?**

A Yes, if the agency is an incorporated insurance agency. Sections 626.753 (general lines), 626.794 (life) and 626.838 (health), FS, provide that commissions may be shared with or paid to other individuals licensed and appointed as agents for the lines of insurance from which the commissions were generated, or to an incorporated insurance agency. This applies to properly licensed and appointed resident and nonresident agents.

NOTE: When incorporating an insurance agency, the Department of State is the agency to contact. This is not a function of the Department of Insurance. Write to the Department of State, Division of Corporations, 409 E Gaines St, Tallahassee, FL 32399; or telephone (904) 487-6051.

Q **I am licensed to transact the business of insurance. Must I be appointed with one or more insurers before I can market insurance?**

A **YES - THIS IS VERY IMPORTANT.** Your wallet-size ID license does NOT authorize you to transact insurance. A license is issued when an applicant meets all of the eligibility requirements mandated by the statutes, but authority to transact insurance is not established until the licensee is appointed as an agent by the insurance company or companies for which he or she contracts to represent.

If our "Q & A" section omitted information that would be helpful to you or others opening an insurance agency, please write to us at the address listed on page 16 of this issue of *The Intercom* and we will include your inquiry and our response in the next issue. ■

Coalition Encourages Sensitivity for Parents Bereaved by Loss

An official from the Northeast Florida Healthy Start Coalition, which studies fetal and infant mortality, has questioned “extremely insensitive practices” by certain insurance agents who make telemarketing calls to parents bereaved by the loss of an infant.

According to coalition Chair Barbara Gordon, these agents typically scan the obituaries in their local newspaper to identify such parents. As soon as a week later, they call the family to market insurance for any remaining children.

“The loss of a baby is a traumatic event for families, one which often takes years to work through,” wrote Gordon in a letter to Florida Insurance Commissioner Bill Nelson.

“Families who have suffered the loss of a baby must cope with great pain and should not be subjected to insensitive sales representatives contacting them at home by phone.”

In particular, Gordon relayed to Commissioner Nelson the story of one mother whose one-day-old son had died. A local newspaper printed the infant’s obituary and the mother received marketing calls from three different insurance companies within a week.

The Department of Insurance has no indications that such incidents are widespread, but joins the coalition in urging companies, agencies and agents to ensure that such insensitive and potentially distressing tactics are not part of their marketing practices.

CHAPTER 4-223 *Continued from page 10*

4-223.035 Related Laws and Rules.

(1) In addition to the statutes and rules referenced herein, products and transactions addressed by these rules shall be subject to all applicable provisions of the Insurance Code and Department rules including Rule Chapters 4-151, 4-162, and Part III of Rule Chapter 4-215, Florida Administrative Code.

(2) Nothing in these rules is intended to relieve financial institutions, insurers, agents, or any other persons engaged in marketing annuities in conjunction with financial institutions from the duty to comply with applicable rules of the Florida Department of Banking and Finance. Specific Authority 624.308 FS. Law Implemented 626.051, 626.9541, 626.9641, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.036 Coercion.

(1) No person shall by words, actions, or distribution of written materials require or imply that the purchase of an annuity by a borrower or prospective borrower is required as a condition of, or is in any way related to, the lending of

money or the extension of credit, the establishment or maintenance of a trust account, the establishment or maintenance of a checking or savings account, or the provision of services related to any such activities.

(2) To the extent that annuities may permissibly be marketed in connection with or in conjunction with any activities described in this section:

(a)1. The agent shall disclose both verbally and in writing that the purchase of an annuity is unrelated to and not a condition to the provision or terms of any banking service or activity.

2. The written disclosure required by this section shall be set forth in a separate document.

3. One copy of the disclosure shall be given to the consumer and, if an annuity is purchased, one copy, signed by the consumer, shall be retained by the financial institution.

(b) If an annuity product is offered in a package with other services described in (1) above, the financial institution shall make the annuity product available separately, subject to terms and

conditions no less favorable to the consumer than in the package.

Specific Authority 624.308, 626.9611 FS. Law Implemented 626.051, 626.9541, 626.9561, 626.988(8), 628.151(1) FS. History - New 3-31-96.

4-223.037 Remedies.

(1) Any person violating the provisions of this rule chapter shall be subject to the issuance of a Cease and Desist Order in accordance with the provisions of Section 626.9581, Florida Statutes, and to the imposition of an administrative penalty pursuant to Section 626.9521, Florida Statutes, and to such other sanctions or proceedings as are authorized by the Florida Insurance Code.

(2) Any insurance agency violating the provisions of Part X of Chapter 626, Florida Statutes, as interpreted by these rules, must obtain a license as an insurance agency in accordance with the provisions of Section 626.112(8), Florida Statutes. Specific Authority 624.308 FS. Law Implemented 624.4211, 624.418, 626.051, 626.112, 626.9521, 626.9581, 626.988(8) FS. History - New 3-31-96.

The Department is now working on rules to regulate the sale of other types of insurance in association with third parties, including financial institutions. A reprint of those rules will appear in The Intercom once they are adopted. ■

**DESIGNATION OF PRIMARY AGENT FOR INSURANCE AGENCY
And PRIMARY ADJUSTER FOR ADJUSTING FIRM;
And FILING OF FIRM, CORPORATION, OR BUSINESS NAME**

This form must be filed with the Department of Insurance on or before January 1 of each year.

1. Owner's full name, Social Security number and Residence address:

SSN	Last Name	Jr., Sr., etc.	First Name	M.I.
Residence Street Address		City	State	Zip Code
				Residence Telephone Number ()

2. Business name, Federal ID number, Street address and Telephone number of the Insurance Agency or Adjusting Firm:

Federal ID Number	Business Name	Business Telephone Number
Business Street Address		City
		State
		Zip Code

3. (To be completed by agents/adjusters only - see instructions on back) Full Name and Social Security number of the individual who is the designated PRIMARY AGENT/PRIMARY ADJUSTER for the insurance agency or adjusting firm location listed in question #2:

SSN	Last Name	Jr., Sr., etc.	First Name	M.I.
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Primary Agent _____ Primary Adjuster _____

4. Are there additional business locations operating under the same business name listed in question #2? _____ Yes _____ No
If "Yes" is marked, list the complete address for each of the additional locations.

Business Street Address	City	State	Zip Code
Business Street Address	City	State	Zip Code

5. If you, as a licensed agent or adjuster, are doing business under a firm or corporate name other than your own individual name, the following information must be provided:

Federal ID Number	Firm or Corporate Name
Address	

6. Name and Social Security number of the president, directors and other persons operating under the firm or corporate name listed in Question #2 who are involved in transacting insurance or in the use of the business name:

SSN	Last Name	Jr., Sr., etc.	First Name	M.I.
SSN	Last Name	Jr., Sr., etc.	First Name	M.I.
SSN	Last Name	Jr., Sr., etc.	First Name	M.I.

**(continued on reverse side)
SIGNATURE REQUIRED**

Question #6 cont'd.



SSN	Last Name	Jr., Sr., etc.	First Name	M.I.
SSN	Last Name	Jr., Sr., etc.	First Name	M.I.

I understand that if there is a change in the above information, I must complete a new form and file it with the Department of Insurance within sixty (60) days.

Signature of Designated Primary Agent or Primary Adjuster _____ Date _____

Please Return This Form To:
 Bureau of Agent & Agency Licensing
 200 East Gaines Street
 Tallahassee, Florida 32399-0319

Revised 2/93
 D-14-63/64

Instructions for Completing Primary Agent/Primary Adjuster Form

To be completed by each person *operating* an insurance agency or adjusting firm, and for each location of a multiple agency or firm. (See definitions of Insurance Agency and Adjusting Firm shown below.)

Each location of an insurance agency or adjusting firm shall file the name and agency or firm address of the primary agent or primary adjuster. The primary agent or primary adjuster may be the same person listed in section 1. If the agency or firm listed in question #3 is not a corporation, then use the Social Security number of the individual proprietor in place of the Federal Employer Identification Number (FEIN). (See definitions of primary agent and primary adjuster shown below.)

DEFINITIONS:

“Insurance Agency” is a location where *any agent* is engaged in the business of insurance. Note: If an agent is operating alone, the agent is considered to be an agency and this form must be filed with the Department of Insurance.

“Primary Agent” is the licensed agent who is responsible for the hiring and supervision of all individuals within an insurance agency location who deal with the public in the solicitation or negotiation of insurance contracts or in the collection or accounting of moneys from the general public. Note: An agent may be designated as primary agent for only one insurance agency location.

“Adjusting Firm” is a location where *any adjuster* is engaged in the business of adjusting. Note: If an adjuster is operating alone, the adjuster is considered to be a firm and this form must be filed with the Department of Insurance.

“Primary Adjuster” is the licensed adjuster who is responsible for the hiring and supervision of all individuals within an adjusting firm location who deal with the public and who act in the capacity of a public adjuster or an independent adjuster. Note: An adjuster may be designated a primary adjuster for only one adjusting firm location.

Failure to File:

No Insurance agency location or adjusting firm location shall conduct the business of insurance unless a primary agent or primary adjuster is designated at all times. Failure to designate a primary agent or adjuster as statutorily required shall constitute grounds for requiring that the agency or firm obtain a license in accordance with Sections 626.112 and 626.172, F.S.



DISCIPLINARY ACTIONS JAN. - MAY 1996

Many of the following disciplinary actions have been resolved through consent orders based upon settlement stipulations in which there was no finding or admission of guilt by the licensee. The Department believes that notification of these actions is in the public interest and, although every effort is made to provide correct information, our readers are cautioned to check with the Department before making a decision based upon this listing. This listing does not reflect pending appeals or requests for hearings. Inquiries should be directed to: Bureau of Agent and Agency Licensing, 200 East Gaines Street, Larson Building, Tallahassee, FL 32399-0319; telephone (904)922-3137.

Warning: No part of this listing may be used by a licensee to gain a competitive advantage over any person named herein. Any licensee who does so may be in violation of Section 626.9541(1)(c), F.S.

Fines/Penalties

LAST NAME,	FIRST,	MI	CITY	ST.
ANDING	JIMMY	A	FORT LAUDERDALE	FL
BOWERMAN	KAREN	R	HOMESTEAD	FL
BROEGE JR	ROBERT	F	PALM HARBOR	FL
BRUNER	DANIEL	S	ST PETERSBURG	FL
CATALAN	ERLA		HAIALEAH	FL
CHAMPION TITLE & TRUST CORP			MIAMI	FL
CRESCENTE	GASPARE		PORT RICHEY	FL
CURCIO JR	ROBERT	A	LINDENHURST	NY
DEMARCO	ROBERT	T	DUNEDIN	FL
DOBRIN	PAUL	L	DELRAY BEACH	FL
DOTO	GERARD	A	MEDHAM TOWNSHIP	NJ
END	STEPHEN	F	LOS ANGELES	CA
EUBANK	BARBARA	W	DELAND	FL
FELLER	JAMES	S	LOS ANGELES	CA
FERGUSON	NOEL	W	FORT LAUDERDALE	FL
FICARROTTA	PAUL	J	TAMPA	FL
FORTUN	MANUEL	P	MIAMI	FL
GAMBLES	ANTHONY		ORLANDO	FL
GARCIA	LUIS	M	MIAMI	FL
GASPARINO	DENISE	C	FORT LAUDERDALE	FL
GHOLSON	NEIL	B	TAMPA	FL
GONZALEZ	ANA	A	HAIALEAH	FL
GOULDEN	JENNIFER	L	BRANDON	FL

GREEN	DAVID	R	JACKSONVILLE	FL
HARDEMAN	BOBBY	W	TAMPA	FL
HOF	MARGARET	M	DAVIE	FL
INGRAM	KENNETH	L	GREENVILLE	OH
KATZ	LANA		FORT LAUDERDALE	FL
KENNEDY	JEFFREY	M	WARRENVILLE	IL
KLOSTERMAN	DONALD	L	LARGO	FL
LAROTONDA	JOHN	M	TAMPA	FL
MANTZ	CHARLOTTE	L	LAKELAND	FL
MARTINEZ JR	OSCAR	G	MIAMI	FL
MCCONNELL	JEFFREY	W	WEST PALM BEACH	FL
MEYER	CARL	A	PENSACOLA	FL
REYDEL	MUNIZ	A	HAIALEAH	FL
NORRIS	CHARLES	K	PENSACOLA	FL
PEARSON	DION	D	LOUISVILLE	KY
PELLICANO	DAVID	J	PORT ST LUCIE	FL
RODRIGUEZ	RALPH	N	MIAMI	FL
RUSSELL	WALTER		ROSEVILLE	MN
SMITH	JOSEPH	C	BONIFAY	FL
SULLIVAN	DANIEL	L	DEFUNIAK SPRINGS	FL
URENA	OZZIE	FL	BOCA RATON	FL
VELUNZA	BERT	A	MIAMI	FL
VERDERBER	BARBARA	A	LOKALAND	FL
WAURZONZEK	MARK	A	DAYTONA BEACH	FL
WHITICE	GARY	W	MIAMI	FL
WILKES	RICHARD	C	PANAMA CITY	FL
WILLIAMS	DAVID	J	WESTER	FL
WILLIAMS	LEROY	E	CRESTVIEW	FL

CATALAN	ERLA	G	HAIALEAH	FL
CHUIZ	OSCAR		MIAMI	FL
COOK	SHIRLEY	A	SEMIHOLE	FL
CUERVO	MICHAEL	P	TAMPA	FL
DAVIES	DAVID	L	ALTAMONTE SPRINGS	FL
DAVILA	DAVID	A	HAIALEAH	FL
DEJES	DAVID	F	JACKSONVILLE	FL
DEMINIS	WILLIE	A	BOYNTON BEACH	FL
DOWNS	RICHARD	F	ST PETERSBURG	FL
DOUGLAS	MICHAEL	A	SARASOTA	FL
ENGLISH	BEVERLY	K	TAMPA	FL
FEIG	JEFFREY	A	HAIALEAH	FL
FERNANDEZ	GLORIA	F	HAIALEAH	FL
GARCIGA	ROBERTO	R	JACKSONVILLE	FL
GREEN	DAVID	A	POMPAÑO BEACH	FL
GRIFFER	MARY	E	GAINESVILLE	FL
HOLDER	TIMOTHY	A	TEQUESTA	FL
LEHMAN	ALBERT	V	HAIALEAH	FL
MUNIZ	REYDEL	A	POMPAÑO BEACH	FL
NORRIS	NANCY	J	PUNTA GORDA	FL
PERKS	CHARLES	F	LAKELAND	FL
ROBERTS	BENNIE	B	POMPAÑO BEACH	FL
RUSH	BARBARA	A	WEST PALM BEACH	FL
SHEPHERD	LOKALAND	M	PALMETTO	FL
SMITH	CHARLES	K	FORT LAUDERDALE	FL
TURY	CHRISTOPHER	B	CORAL GABLES	FL
VOLUNTEER TITLE SERVS OF FL	DENISE	D	CLEARWATER	FL
WEBSTER	WILLIAM	E	POMPAÑO BEACH	FL
WILD	WILLIAM	H	CLEARWATER	FL
ZIEGLER JR	WILLIAM			

Probations

LAST NAME,	FIRST,	MI	CITY	ST.
ANDING	JIMMY	A	FORT LAUDERDALE	FL
BOWERMAN	KAREN	R	HOMESTEAD	FL
BROEGE JR	ROBERT	F	PALM HARBOR	FL
BRUNER	DANIEL	S	ST PETERSBURG	FL
BURNS	SUIZI		ST AUGUSTINE	FL
CHAMPION TITLE & TRUST CORP			MIAMI	FL
CRESCENTE	GASPARE		PORT RICHEY	FL
CURCIO JR	ROBERT	A	LINDENHURST	NY
DENNIS-RUSSELL	FELICIA	A	SUNRISE	FL
FERGUSON	NOEL	W	FORT LAUDERDALE	FL
FORTUN	MANUEL	P	MIAMI	FL
GAMBLES	ANTHONY		ORLANDO	FL
GASPARINO	DENISE	C	FORT LAUDERDALE	FL
GONZALEZ	ANA	A	HAIALEAH	FL
GOLDEN	JENNIFER	L	BRANDON	FL
HARDEMAN	BOBBY	W	TAMPA	FL
INGRAM	KENNETH	L	GREENVILLE	OH
JOHNSON	JAMES	J	ST CLOUD	FL
KATZ	LANA		FORT LAUDERDALE	FL
KENNEDY	JEFFREY	M	WARRENVILLE	IL
KING	BRADLEY		HOLLYWOOD	FL
KLOSTERMAN	DONALD	L	LARGO	FL
LAROTONDA	JOHN	M	TAMPA	FL
MANTZ	CHARLOTTE	L	LAKELAND	FL
MARTINEZ JR	OSCAR	G	MIAMI	FL
NORRIS	CHARLES	K	PENSACOLA	FL
PEARSON	DION	D	LOUISVILLE	FL
PELLICANO	RALPH	N	MIAMI	FL
RODRIGUEZ	JOSEPH	C	BONIFAY	FL
SULLIVAN	MICHAEL	A	LOKALAND	FL
SOLOMON	DANIEL	L	DEFUNIAK SPRINGS	FL
SULLIVAN	OZZIE	FL	BOCA RATON	FL
URENA	JOHN	A	LAKELAND	FL
VERDERBER	BARBARA	A	DAYTONA BEACH	FL
WAURZONZEK	MARK	A	MIAMI	FL
WHITICE	GARY	W	MIAMI	FL
WILLIAMS	LEROY	E	CRESTVIEW	FL

Suspensions

LAST NAME,	FIRST,	MI	CITY	ST.
1ST GUAR TITLE & ESCROW OF FL			POMPAÑO BEACH	FL
1ST GUAR TITLE & ESCROW OF FL			CORAL GABLES	FL
1ST GUAR TITLE & ESC OF SARAS			SARASOTA	FL
1ST GUARANTY TITLE & ESCROW			POMPAÑO BEACH	FL
AM NATL TITLE & ESCROW OF FL			POMPAÑO BEACH	FL
AM NATL TITLE & ESC OF S FL			DEERFIELD BEACH	FL

Revocations

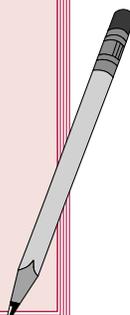
LAST NAME,	FIRST,	MI	CITY	ST.
ALLAN	DONALD	G	HAIALEAH	FL
ALMENDRAL	RAFAEL		MIAMI	FL
AMOS	CHARLES	C	ST PETERSBURG	FL
BAIO	PHILIP	F	PALM HARBOR	FL
BOSTON	RONALD	J	TAMPA	FL
BRUNER	DANIEL	S	ST PETERSBURG	FL
BUSCHER	RUSSELL	B	LAKE CITY	FL
CALLAGHAN	MARK	T	SARASOTA	FL
CROWELL	ALPHONSO		OKEECHOBEE	FL
CUTHBERT	DOUGLAS	G	WEST PALM BEACH	FL
DEPRIEST	PENNY	L	PANAMA CITY	FL
DRAFFIN	THOMAS	H	FORT MYERS	FL
FERNANDEZ	GLORIA	M	MIAMI LAKES	FL
FESSENDEN	JOHN	H	PALM HARBOR	FL
FLEMING	STEPHEN	R	BRADENTON	FL
FORREST	DEREK	K	WINTER GARDEN	FL
GIVENS	CHARLES	J	LEESBURG	FL
GRUNDSTROM	GARY	N	SAFETY HARBOR	FL
HANDY	ALAN	E	LARGO	FL
HARDEMAN	BOBBY	W	TAMPA	FL
HAY SR	RONALD	M	ARCADIA	FL
HENDERSON	PHILIP	J	OCALA	FL
HODGES JR	FREDERICK	B	TALLAHASSEE	FL
HOWELL	JEFFREY	J	ROTONDA	FL
JACOB	FRANCIS	D	WINTER HAVEN	FL
JENKINS	LOUDELLE	A	WEST PALM BEACH	FL
LAND TITLE CO OF FL INC			CLEARWATER	FL
LATTER	IRVING	M	TAMPA	FL
MCLEAN	KELLY	E	JACKSONVILLE	FL
MCSWAIN	CHRIS	M	OCALA	FL
MILES	JOHN	A	TALLAHASSEE	FL
MILLER	KENNETH	D	JUPITER	FL
MURPHY	JOSEPH	F	BOYNTON BEACH	FL
NEWTON	DAVID	E	ORANGE PARK	FL
NOGOWSKI	ROY	A	CORAL SPRINGS	FL
PARAGON TITLE SERVICES INC			CORAL GABLES	FL
REYNOLDS	MICHAEL	S	ORANGE PARK	FL
RYDER	BARCLAY	K	NORTH PORT	FL
SCHMOOK	ROBERT	W	ST PETERSBURG	FL
SMITH	EDWARD	J	PALM COAST	FL
SOUTHERN HOME TITLE INC			CLEARWATER	FL
SPRECHER	JAMES	D	CLEARWATER	FL
THURBY	LINDA	S	BRADENTON	FL
VANCLEEF	KIMBERLY	J	JACKSONVILLE	FL
WASHINGTON	FLOYD	M	PENSACOLA	FL
WATSON	GREGORY	V	TAMPA	FL
WHITAKER	KENNETH	M	TALLAHASSEE	FL
WILKERSON	JUNE	P	TALLAHASSEE	FL

Fraud Warning Statement

The 1995 Fraud Bill passed by the Florida Legislature created a new provision requiring a fraud warning statement on claims and application forms. Section 817.234 (1)(a) 3(b), F.S., provides that all claims and application forms shall contain a statement, approved by the Department of Insurance, that clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree." This act became effective March 1, 1996.

AGENT AND COMPANY RESPONSE TO DOI REQUESTS FOR INFORMATION

It is crucial that agents and companies respond to the Department of Insurance when information is requested for compliance and/or policyholder service reasons. The response should be timely and thorough. A prompt response can assist the Department in resolving service problems before they become regulatory problems. Providing fair and quick service to policyholders is good business and it can greatly increase your chances of success.



DID YOU KNOW?

THE FLORIDA MARKET ASSISTANCE PLAN (FMAP) HAS CHANGED LOCATIONS. HERE'S AN UPDATE:

THE OFFICE IS LOCATED AT: 2894-B REMINGTON GREEN LANE, TALLAHASSEE, FL 32308; THE NEW MAILING ADDRESS IS: P.O. BOX 15277, TALLAHASSEE, FL 32317; TELEPHONE NOs. (800) 524-9023 OR (904) 298-4436; FAX NO. (904) 298-4438.

THE
INTERCOM

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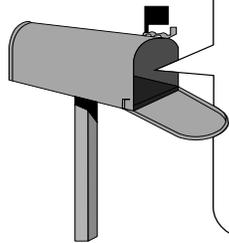


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Editor/Publisher

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We welcome suggestions and inquiries concerning *The Intercom*. Written
suggestions should be mailed to Lucy Walker, Florida Department of Insurance,
200 E. Gaines Street, Tallahassee, Florida 32399-0318.



NAME/ADDRESS CHANGE?

If a change occurs in a licensee's name, residence address, principal business street address, or mailing
address, notification must be forwarded to the Department within 30 days of the change. Licensees who fail to comply
are in violation of Chapter 626.551, F.S., and are subject to investigation and possible disciplinary action.

Please mail your notice of change to:
Bureau of Licensing
Department of Insurance
200 East Gaines Street
Tallahassee, FL 32399-0319

A name change necessitates the re-issuance of your insurance license. Please remember to enclose the \$5 fee
and a copy of your marriage certificate, divorce decree, or other documentation at the time you request re-issuance.

Bill Nelson

Treasurer/Insurance Commissioner/Fire Marshal
DIVISION OF AGENT AND AGENCY SERVICES

John E. Hale, Division Director
Mary Alice Palmer, Assistant Division Director
Phil Fountain, Chief, Bureau of Investigations
Shirley Kerns, Chief, Bureau of Licensing

Bureau of Investigations (904) 922-3136
Bureau of Licensing (904) 922-3137
Education Section (904) 922-3134 Ext. 1108
Qualifications Section (904) 922-3137 Ext. 1101

Adjuster's Qualifications • Fingerprint Information
Nonresident Agents • Bail Bond Agents
Managing General Agents • Terminations
Customer Representatives • Mediator Approval

License Control Section (904) 922-3137 Ext. 1100

Certification & Clearance Letters
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Mailing Lists

Department of Insurance
Division of Agent and Agency Services
200 East Gaines Street
Tallahassee, Florida 32399-0318

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