

# COMMONWEALTH OF VIRGINIA

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## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

July 26, 2002

Administrative Letter 2002-8

TO: ALL INSURANCE COMPANIES; HEALTH, DENTAL, OPTOMETRIC AND LEGAL SERVICES PLANS; AND HEALTH MAINTENANCE ORGANIZATIONS LICENSED IN VIRGINIA

RE: CHANGES IN LAWS GOVERNING LICENSING OF VARIOUS TYPES OF INSURANCE AGENTS AND PRODUCERS

The purpose of this administrative letter is to discuss the many changes in Virginia's laws governing the licensing and other activities of insurance agents, consultants, and other licensees. Because of the importance that the content of this letter be widely disseminated, **I am sending this administrative letter to all insurers with the request that they instruct their currently appointed agents to review it by accessing it via the Bureau of Insurance web site at:**

<http://www.state.va.us/scc/division/boi/webpages/administrativetrselection.htm>

**I am also requesting that such insurers include, commencing immediately, an instruction to each newly appointed Virginia agent to review this administrative letter at the above website address.** Bureau of Insurance staff will review whether companies have carried out this request during regular and special market conduct examinations, and as part of consumer complaint and agent investigations conducted by the Bureau.

Finally, I am sending copies of this administrative letter to the various agent associations in Virginia, with the request that they, too, attempt to disseminate this information to their members, and to their national offices.

Statutory provisions referred to in this memorandum may be viewed via the Bureau's Web site at:

<http://www.state.va.us/scc/division/boi/webpages/administrativetrselection.htm>

As most recipients of this administrative letter are aware, there has been a concerted effort over the past few years for states to adopt reciprocal producer licensing requirements so as to make the licensing process simpler for those seeking to be licensed in a number of states. Spurred on by the action of Congress in enacting the Financial Services Modernization Act of 1999 (known popularly as the Gramm-Leach-Bliley Act or "GLBA"), the states undertook serious efforts to incorporate into their statutes the provisions of the NAIC Producer Licensing Model Act (PLMA), which has been determined to satisfy the federal requirements for reciprocity. The goal, which has been reached and exceeded, was that at least 29 states adopt reciprocal agent licensing requirements by November 12, 2002 (3 years from the effective date of GLBA).

Legislation was introduced in the 2001 Virginia General Assembly to initiate substantial changes to Chapter 18 of Title 38.2, as well as certain related provisions. The bill was passed by the General Assembly and signed into law by the governor. The effective dates of the majority of provisions in the 2001 bill were delayed until September 1, 2002, in order to afford sufficient time for the Bureau to implement major revisions to its processes and automated systems, but yet to be in effect prior to the federal deadline. This goal, too, has been reached.

The Bureau will be sending out a number of communications dealing with the changes to our law. A new administrative letter, replacing Administrative Letter 1997-1 will be disseminated separately, and will address the questions regarding when a license is or is not required.

Because many of these communications directly impact agents and agencies, it is crucial that companies, agencies and associations receiving this letter remind licensed individuals and business entities of the importance of making sure their current RESIDENCE address is on file with the Bureau. A form for making such notification, the VIRGINIA SERVICE REQUEST FORM (PIN 5001) is available through the Bureau's Interactive Voice Response (IVR) phone system at:

**804.371.9631**

or via the Bureau's Web site at:

**<http://www.state.va.us/scc/division/boi/webpages/formsapplications.htm>**.

This administrative letter will address some changes in very general terms, because separate notifications will be sent directly to those affected. Other changes will be addressed in more detail. In the remainder of this administrative letter, we will address the following topics:

LICENSE CONVERSIONS  
NON-STANDARD LICENSES (NSL)  
NEW LICENSING REQUIREMENTS  
NONRESIDENT LICENSING  
APPOINTMENTS  
MISCELLANEOUS DISCLOSURE AND DISCIPLINARY ACTIONS  
CONTINUING EDUCATION  
TABLES OF CONVERSION AND NEW LICENSE TYPES

**LICENSE CONVERSIONS**

The new law creates certain new license types, eliminates certain license types, and consolidates certain restricted license types by creating three new general limited lines licenses. We will address each separately, below.

**Life & Health license split into 2 separate licenses –**

- In order to create consistency among the states, the NAIC's PLMA recognizes two separate license types, rather than a single Life & Health license. Effective on September 1, 2002, then, all agents holding the Life & Health (Type 001) license will be issued two new licenses – a "Life and Annuities" (Type 007) and a "Health" (Type 008) license. This process will be automatic, and will require no action on the part of the licensee or the appointing insurers. The agent's authority under the 2 new licenses will be exactly the same as it was under the former Life &

Health license, as can be determined from reviewing the attached Conversion Table and Table of License Types.

- Each individual and agency holding a Life & Health license will be receiving in the mail a notification of this action, along with new licenses to replace the combination license. Along with this notification, the licensee will receive a memorandum explaining the implications of this action.
- There will be NO change in the appointment process, nor will the Bureau require a separate appointment under each of the 2 new licenses. Insurers authorized to issue "LH" appointments will continue to do so, and one LH appointment will support both the 007 and 008 licenses as long as the appointment remains active.

#### **Consolidation and conversion of limited lines licenses –**

- In recent years, Virginia has issued as many as 19 different types of limited lines or restricted licenses. Under the new law, this number has been reduced to 7. While the 3 temporary license types will remain, as will the "motor vehicle rental contract agent" license, all of the other limited lines licenses will be consolidated into three new license types: **Limited Lines Life & Health (Type 080); Limited Lines Property & Casualty (Type 081), and Limited Lines Credit (Type 015)**. The attached tables show the manner in which the licenses will be consolidated. Therefore, all agents holding one or more of the 15 discontinued limited lines licenses will receive one or more of the 3 new limited lines licenses.
- As is the case for the Life & Health license conversions discussed above, this process will be automatic, and will require no affirmative action on the part of the agent or the appointing insurer. Converted licenses, along with an explanatory memorandum, will be furnished directly to each affected licensee, with license effective dates of September 1, 2002.

#### **Conversion of "partial qualification" licenses –**

- These licenses were issued prior to July 1, 1979, and are held only by Virginia residents. They provided authority to sell selected types of insurance, but not the full authority permitted by the Life & Health or Property & Casualty licenses that the Bureau issued subsequently. We have referred to the above licenses as "partial qualification" licenses in order to differentiate them from the "full" Life & Health or Property & Casualty licenses. The "partial qualification" licenses can be seen on the attached Conversion Table.
- Changes in Virginia law effective September 1, 2002 (§ 38.2-1824 B) require that each "partial qualification" license be converted to a "full" authority license. Again, this process is automatic, and does not require any specific action on the part of licensees or appointing insurers. Converted licenses, along with an explanatory memorandum, including an explanation as to how the new licenses will be subject to continuing education requirements, will be furnished directly to each affected licensee, with license effective dates of September 1, 2002.
- In adopting the new law, the Virginia General Assembly made it clear that no "partial qualification" agent's authority should be reduced by conversion. Therefore, authority under the newly issued license is at least equal to, and in many cases is greater than the authority under the partial qualification licenses.

### **NON-STANDARD LICENSES (NSL)**

We refer to the following as “non-standard” or NSL licenses: **Life & Health Insurance Consultant (Type 059); Property & Casualty Insurance Consultant (Type 058); Surplus Lines Broker (Type 065); Viatical Settlement Broker (Type 064); Managing General Agent (Type 061); Reinsurance Intermediary Broker (Type 062); and Reinsurance Intermediary Manager (Type 063)**. In revising the licensing statutes, every effort was made to make these license types reciprocal with other states, although not all were actually subject to the federal requirements. Although these licenses are basically unchanged, there are some things that licensees and others should keep in mind:

- The laws governing licensing and activities of both types of Insurance Consultants can be found in Article 4 of Chapter 18 of Title 38.2. The annual license renewal application deadline and renewal dates have been changed to be consistent with all other NSL licenses.
- While Chapter 48 of Title 38.2 still contains the general requirements for the Surplus Lines Insurance law, the LICENSING requirements for Surplus Lines Brokers have been moved from that chapter to Article 5.1 of Chapter 18.
- While Chapter 57 of Title 38.2 still contains the general requirements for Viatical Settlements, the LICENSING requirements for Viatical Settlement Brokers have been moved from that chapter to Article 6.1 of Chapter 18.
- The laws and licensing requirements applicable to Reinsurance Intermediary Brokers and Reinsurance Intermediary Managers, which were formerly found in Article 5 of Chapter 18 of Title 38.2 can now be found in Article 8 of Chapter 13.
- The laws and licensing requirements applicable to Managing General Agents, which were formerly found in Article 6 of Chapter 18 of Title 38.2 can now be found in Article 9 of Chapter 13.
- Efforts were made to conform the licensing requirements for the NSL licenses discussed above as closely as possible to those applicable to other licenses issued pursuant to Chapter 18 of Title 38.2.

**Insurers, please note that the previous requirement for Managing General Agents to be appointed has been REPEALED.**

- All of the NSL licenses are subject to renewal requirements. Regardless of what the renewal dates might have been in the past, ALL of the NSL licenses will now be renewable with effective dates of July 1. Licenses administered under Chapter 13 of Title 38.2 are renewable every other year, while the Insurance Consultant, Surplus Lines Broker and Viatical Settlement Broker licenses are renewable annually. Application for renewal, along with payment of the required renewal fee, must be made on or before June 1 of the renewal year or the license will terminate on June 30 of that year. In those instances where the renewal date under the former law was prior to July 1, licensees will be granted an automatic extension at the end of the current renewal period so that the new renewal date can become July 1.

- The movement of the Reinsurance Intermediary and Managing General Agent licensing requirements to Chapter 13 was accomplished primarily for the purpose of re-assigning responsibility for licensing and renewal of these entities to the Bureau's Financial Regulation Division instead of the Agents Licensing Section. Commencing September 1, 2002, then, **ALL** communications relating to these license types should be directed to the Financial Regulation Division. Contact information is as follows:

Bureau of Insurance  
Financial Regulation Division  
P.O. Box 1157  
Richmond, Virginia 23218

Telephone calls should be made to 804.371.9637  
Telefaxes should be sent to 804.371.9511

- Those with an interest in NSL licenses are urged to review the new laws carefully. There are some substantive changes that cannot be addressed in depth in this administrative letter.

### **NEW LICENSING REQUIREMENTS**

#### **Elimination of pre-licensing study course requirement –**

Bureau staff recommended to the General Assembly that it repeal the required 45 hour prelicensing study course requirement, and this change takes effect for licenses applied for after passing the appropriate examination on or after September 1, 2002. There were a number of reasons for making this recommendation. First, after 12 successful years of administration of the automated licensing examinations, it has been more than amply demonstrated that the examinations administered by our outside contractor are fair, unbiased, appropriate for Virginia, and adequately test the candidate's entry-level knowledge. Second, we concluded that no viable purpose was served by the imposition of an arbitrary number of prelicensing examination preparation hours. If a candidate can pass the examination, it should not matter how or for how many hours the candidate prepared. Third, in light of the increased availability of "distance learning" options for candidates, and particularly those in areas not easily accessible to classroom courses, it can no longer be successfully argued that one form of preparation is necessarily superior to another. "Distance learning" has been permitted in lieu of classroom study for a few years, and we have seen no diminution in the number of candidates successfully passing the examinations. And, while enforcement of the 45 hour classroom requirement was problematic, any attempt to enforce a specific hourly requirement for "distance learning" courses was untenable. We therefore concluded that candidates should be permitted to choose the methodology they wish to utilize in preparing for the examination, and professional educators should be permitted to determine the appropriate form and length of examination preparatory courses. We believe that most candidates should and will continue to take study courses, even if not required to do so by law, and that elimination of the statutory requirement may even have the beneficial result of removing from the marketplace the types of "study course mill" operations that have existed for many years for no viable purpose other than to issue to the candidate an official certificate of course completion.

### **New and modified licensing examinations –**

Beginning on the first testing day after September 1, 2002, Experior Assessments will be administering the following examinations for the licenses described:

Life & Annuities Exam - for those wishing to apply ONLY for the Life & Annuities (Type 007) license.

Health Exam – for those wishing to apply ONLY for the Health (Type 008) license.

Life & Health Exam – for those wishing to apply for BOTH the Life & Annuities (Type 007) and the Health (Type 008) licenses.

Personal Lines Exam - for those wishing to apply for a Personal Lines (Type 032) property and casualty license.

Property & Casualty Exam – for those new applicants OR those already holding a Personal Lines license who wish to obtain full property & casualty authority, including both personal and commercial lines, and to apply for the full Property & Casualty (Type 030) license.

Title Exam - for those wishing to apply for a Title (Type 033) license.

Additional information regarding registration, updated content outlines, and other relevant information is provided in the 2002-2003 edition of the Virginia Licensing Information Bulletin, now available from Experior for examinations administered on or after September 1, 2002.

### **Penalty for failing examination three times changed –**

Under prior law, a candidate who failed the examination 3 times was required to take the prelicensing study course again before being permitted to sit for the examination. With the elimination of the prelicensing study course requirement, the statutory penalty has been changed, and the candidate will henceforth be required to wait a minimum of 30 calendar days before being permitted to take the examination again after failing the examination 3 times.

### **Consolidation of limited lines licenses –**

Although we have discussed this in some depth already in the section dealing with license conversions, we want to stress again that under the new law we have reduced some 19 former restricted license types to 4 clear and simple limited lines licenses: Limited Lines Life & Health (Type 080); Limited Lines Property & Casualty (Type 081) ; Limited Lines Credit (Type 015); and Motor Vehicle Rental Contract (Type 024).

### **Adoption of consistent definitions – [See § 38.2-1800]**

Definitions of terms such as “business entity,” “home state,” “solicit,” “sell,” and negotiate,” have been modified so as to be more consistent with definitions used in other states.

Throughout the definitions and elsewhere, we attempted to recognize the term “producer” so as allow it to be used **interchangeably** with “agent” and “insurance agent”. This means that rather than change the word “agent” to “producer” throughout the chapter, and rather than ignoring

the word “producer” that is used in the PLMA and in many other states, we chose to clarify in the definitions that “agent” and “producer” are synonymous.

In order to reduce the number of disputes arising from misunderstandings, references to time frames, such as “30 days” have been clarified so that they refer either to “business” days or “calendar” days, depending upon the context. Companies and agents are on notice from this point forward that when we talk about “30 calendar days” or “183 calendar days” (i.e. 6 months plus a few extra days’ leeway), these are STATUTORY requirements, not administrative requirements. This means that we have NO authority to make exceptions or grant extensions.

### **License applications –**

As has been the case for some time, Virginia will continue to accept (both for resident and nonresident license applications) either our own license application form or, where applicable the NAIC Uniform Application for Individuals or the NAIC Uniform Application for Business Entities.

Our own basic application for individual license types 007, 008, 030, 032, and 033 (PIN 3001) can be found in the latest edition of the *Virginia Licensing Information Bulletin*, or any of our applications may be requested by telephone to 804.371.9631, or may be downloaded and printed from the Bureau’s web site at:

<http://www.state.va.us/scc/division/boi/webpages/formsapplications.htm>

Those choosing to use the NAIC Uniform Applications may obtain them directly from the National Insurance Producer Registry web site at:

[http://www.licenseregistry.com/uniform\\_nonres\\_licensing.htm](http://www.licenseregistry.com/uniform_nonres_licensing.htm)

### **Specific requirements applicable to business entity licensing –**

Specific requirements for licensing business entities have been added to codify long-standing administrative requirements implemented to address long-standing gaps in the statutory requirements. We are confident that these changes will put the requirements for business entities squarely within the statutory framework, and will reduce confusion among applicants. **[See § 38.2-1820]**

### **Who needs to be licensed? Who is exempt? –**

As stated above, the Bureau is issuing an updated version of Administrative Letter 1997-1 to deal with this topic in more depth, but it should be noted that the law now contains a specific provision consistent with the PLMA, and intended to clarify in detail who needs to be licensed and who does not. This, too, will clear up a number of areas of confusion and misconception that have surfaced over the years. **[See § 38.2-1821.1]**

### **Grounds for license refusal, suspension or revocation clarified and expanded –**

The grounds upon which the Commission may deny a license or seek the suspension or revocation of a license have been expanded and made more consistent with the grounds utilized in other states. **[See § 38.2-1831]**

### **Temporary licenses -**

Temporary licenses issued on or after September 1, 2002 will expire in 180 calendar days, rather than 90 days as under current law. The law was also modified to clarify that temporary licenses are permitted to be issued only to individuals, and not to business entities. **[See § 38.2-1830]**

### **Revised and expanded definition of “resident” – [See § 38.2-1800.1]**

We have made an effort to clarify who qualifies as a “resident” for purposes of licensing. We have also expanded the definition so as to permit certain individuals who would not otherwise meet the definition of a “resident” for any state to qualify for resident licensing in Virginia.

**An Individual** may be deemed to be a resident of Virginia if the individual can provide documentation that the individual:

- maintains his principal place of residence within Virginia;
- declares himself to be a Virginia resident on his federal tax return; and
- declares himself to be a Virginia resident for purposes of paying Virginia income tax and personal property taxes

The Commission may also consider other documentation furnished by the individual, including, but not limited to, a valid current Virginia driver's license or voter registration card, as additional proof of residency.

One potential problem in the PLMA was that some states define a “resident” agent based upon the licensee's place of residence (such as Virginia), while other states may decide to define a “resident” agent based upon the licensee's principal place of business. It is conceivable, then, that an individual residing in a state that bases residency on principal place of business, and having his principal place of business in Virginia would satisfy the “resident” definition of neither state. For purposes of reciprocity, an agent **MUST** be a “resident” agent **somewhere**.

For this reason, Virginia's law has been expanded so that an individual residing outside of Virginia may be considered a resident for purposes of issuance of a license pursuant to this chapter if:

- the individual's principal place of business is in Virginia;
- the individual is able to demonstrate to the satisfaction of the Commission that the laws of his state of residence prevent him from obtaining a resident agent license in that state; and
- the individual affirmatively chooses to qualify as and be treated as a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in the state in which the individual resides, if applicable.

**A Business Entity** may be deemed to be a resident of Virginia if the business entity can provide documentation that the business entity:

- if a domestic corporation, has filed its articles of incorporation with the clerk of the Commission, and has been issued a charter by the Commission;
- if a domestic limited liability company, has filed its articles of organization with the clerk of the Commission, and has been issued a certificate of organization by the Commission;

- if a domestic limited partnership, has applied for and received a certificate of limited partnership from the clerk of the Commission;
- if a domestic partnership, has filed its partnership agreement with the clerk of the appropriate court; or
- if a foreign business entity, that it is not licensed as a resident agency in any other jurisdiction, and demonstrates to the satisfaction of the Commission that its principal place of business is within the Commonwealth of Virginia.

*Note: Legislation enacted by the 2002 General Assembly removed the requirement that the articles of incorporation of a corporation, or the articles of organization of a limited liability company, or the partnership agreement of a limited or general partnership must specify the authority of the business entity to act as an insurance agency.*

### **Revised requirements for agents moving to Virginia –**

Licensees moving to Virginia from another jurisdiction are obligated by law to notify the Bureau of Insurance of their new residence address within 30 calendar days. Issuance of new licenses, or conversion of existing licenses will be based upon the following, which can be found in § 38.2-1818 of the Code of Virginia, as amended:

- **Licensees who already hold one or more active NONRESIDENT VIRGINIA LICENSES** when they relocate to Virginia will be permitted to continue to operate under the nonresident license(s) for a maximum period of 90 calendar days from the date they move to Virginia. During that 90 day period, licensees must submit an application and a clearance letter from the insurance department in the state in which they held their **RESIDENT** license(s), and pay the license processing fee(s) to receive resident license(s) equivalent to the nonresident license(s) they already hold.
  1. Assuming they do so within the 90 days, their nonresident license(s) will terminate simultaneously with the effective date of their new resident license(s), and all appointments in effect under the previous nonresident license(s) will automatically be converted to resident appointments under the new license(s).
  2. However, licensees who fail to convert a nonresident license to a resident license within the 90 day period, will have their nonresident license and all appointments under that license administratively terminated at the end of the 90 days. If this occurs, the individual will be treated as if (s)he never held a Virginia license, and, will be required to satisfy any and all precicensing requirements applicable to the license type for which (s)he is applying, including passing any precicensing examination, and including submission of a new application, criminal history record from the former home state, and fee. Once the new license is issued, the licensee will be required to obtain new appointments from each company (s)he wishes to represent in Virginia.
- **Licensees who do NOT hold a current NONRESIDENT VIRGINIA LICENSE** when they move into Virginia, but who held equivalent authority in their former state of residence also have a period of 90 calendar days in which to file an application, clearance letter, and pay the required fee for each license applied for. **HOWEVER SUCH INDIVIDUALS ARE PROHIBITED FROM SELLING, SOLICITING, OR NEGOTIATING INSURANCE IN VIRGINIA UNTIL SUCH TIME AS THE LICENSE APPLIED FOR HAS BEEN ISSUED.**

1. If the application for a resident license is filed within the 90 day period, the applicant will not be required to satisfy any prelicensing examination requirements.
2. Applicants failing to file their applications within the 90 day period described above will not be entitled to reciprocity, and will be required to satisfy any and all Virginia prelicensing requirements before a resident license will be issued.

### **NONRESIDENT LICENSING**

One of the primary goals of reciprocity under GLBA was to remove barriers for nonresidents seeking licensure in states in which they do not reside. While Virginia had already eliminated most such barriers, the revised statutes dealing with nonresident licensing have been updated to conform more closely with the PLMA. We attempted to make nonresident licensing requirements comparable not only for agents and consultants, but also for applicants for NSL licenses. Our intent was to impose no requirements upon nonresident applicants that are not equally imposed upon resident applicants, and to grant full reciprocity to recognition of licenses issued by other states when holders of such licenses apply for license authority in Virginia.

Under the new laws, effective September 1, 2002, the following will apply to nonresident licensing:

#### **An individual or business entity that is licensed in his or its state of residence may obtain equivalent license authority in Virginia if:**

- The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed as a resident and in good standing in the applicant's home state (i.e. a Letter Of Certification);
- The applicant has presented a proper request for licensure and has paid all required fees;
- The applicant has submitted or transmitted to the Commission the application for licensure that the applicant submitted to the home state, or in lieu thereof, a completed NAIC Uniform Application.

*NOTE: We would remind applicants that if the information contained on the application originally filed in the home state is outdated, particularly demographic information, the applicant would be well advised to provide updated information concurrent with the application filing, so that our records will be accurate.*

- The applicant's home state issues nonresident agent licenses to residents of Virginia on the same basis; and
- The applicant, if a corporation, limited liability company, or limited partnership has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

*NOTE: This is the equivalent of obtaining a certificate of authority from the Secretary of State in most other states. This requirement applies to ANY foreign or alien business entity seeking to do business in Virginia, and is not specific to the business of insurance. We included this*

*provision in Chapter 18, even though not technically a part of the PLMA, as a courtesy, so that nonresident business entities seeking insurance licenses in Virginia would not overlook this requirement.*

### **What licenses will be issued to nonresidents?**

- Any license that Virginia issues to residents can also be issued to nonresidents, PROVIDED that the nonresident holds equivalent home state authority.
- As more and more states adopt the PLMA, the instances of “equivalent authority” will become more common. At this point, for the major license types (Life & Annuities, Health, Personal Lines, Property & Casualty, and Title) the Letter of Certification from the applicant’s home state must show that the applicant has authority for ALL of the lines of authority shown for that license type in the attached Tables. If the nonresident applicant has authority that is more limited than what the Virginia license includes, then pursuant to § 38.2-1836 F the Bureau may choose to issue a **Restricted Nonresident Life & Annuities (Type 082), or a Restricted Nonresident Health (Type 083), or a Restricted Nonresident Personal Lines (Type 084), or a Restricted Nonresident Property & Casualty (Type 085) license.** These restricted nonresident licenses will grant to the licensee authority equal to but no broader than the home state authority the licensee holds.

*For example, if an agent from another state holds a LIFE license, but the license does not include the authority to sell annuities, as the Life & Annuities license does in Virginia, the applicant will NOT be issued a Life & Annuities (Type 007) license, but will instead be issued a Restricted Nonresident Life & Annuities License, under which the licensee’s authority in Virginia will be restricted to selling life insurance only, since that is the limitation on the licensee’s home state authority.*

- With respect to limited lines agents from other states seeking to become licensed in Virginia, we will grant a Virginia limited lines license to any nonresident applicant whose home state authority includes at least 1 of the lines of authority included in that Virginia limited lines license. Pursuant to § 38.2-1836 F, however, if the applicant’s home state authority is narrower than that provided by the Virginia limited lines license, or is for a line of business not included under any Virginia licenses, the applicant will be issued one of the **Restricted Nonresident** licenses in Virginia and the licensee’s authority will be restricted to that which (s)he holds in the home state.
- Nonresidents may also apply for NSL licenses, such as Life & Health Consultant, Property & Casualty Consultant, Surplus Lines Broker, and Viatical Settlement Broker. Under the revised laws providing for pure reciprocity, however, nonresident applicants for such licenses in Virginia **MUST** hold the same authority in their home state.

*For example, in the past Virginia has issued Surplus Lines Broker (SLB) licenses to nonresidents from states in which no SLB license existed, provided the applicant had Property & Casualty authority in the home state. Henceforth, the SLB license cannot be issued to a nonresident applicant unless the nonresident applicant holds **specific license authority** to act as a Surplus Lines Broker (or equivalent title) in the home state.*

## APPOINTMENTS

### The Appointment Process

For the immediate future, Virginia WILL continue to require that agents be appointed by each company within the time frames that have existed for many years. Further, Virginia WILL continue to require that the appointment be specific and authorized under the insurer's license authority in Virginia.

An insurer appointing an agent retains a great deal of responsibility (and liability) with regard to the appointment. It is the **APPOINTING INSURER'S RESPONSIBILITY**, both generally and by statute:

- to make certain that the agent being appointed is appropriately licensed to sell the products that the company is authorizing the agent to sell; and
- to make certain that it does not authorize or permit the appointee to sell products beyond the scope of that agent's license authority in Virginia.

Failure to adhere to these requirements can and will result in initiation of disciplinary proceedings against both the agent acting beyond the scope of the license AND the insurer who allows the agent to do so. We have provided, below, recommendations for the best and quickest means by which appointing insurers may verify the license authority of those they wish to appoint.

This administrative letter is not intended to provide examples of each and every possible scenario that might arise, but we will provide a few examples intended to demonstrate the thought process that appointing insurers are expected to utilize in making appointments:

- **Life & Annuities license**

- **Health license**

- **Limited Lines Life & Health license**

- **Limited Lines Credit license –**

- An insurer that itself has life, annuities, accident and sickness, credit life, or credit accident and sickness insurance authority and verifies that the agent has one or more of the above licenses would utilize an LH appointment. This includes a "Property & Casualty" insurer that also has the "accident and sickness" or the "credit accident and sickness" line of authority.

- **Personal Lines license**

- **Property & Casualty license**

- **Limited Lines Property & Casualty license**

- **Limited Lines Credit license –**

- An insurer that itself has property & casualty authority and verifies that the agent has one of the above licenses would utilize a PC appointment. As noted above, a "Property & Casualty" insurer that also has the "accident and sickness" or the "credit accident and sickness" line of authority would need to appoint the holder of a Limited Lines Credit license with both a PC and a LH appointment in order for that agent to sell all of insurer's authorized lines of credit insurance.

- **Title license –**  
An insurer that itself has title insurance authority, and verifies that the agent has a Title license would utilize a TI appointment.
- **Motor Vehicle Rental Contract Agent license**  
If the agent is to sell both the accident and sickness products and the property & casualty products authorized by the Motor Vehicle Rental Contract Agent license, the agent would need at least 1 **LH** appointment, either from a life & health insurer or from a property & casualty insurer with “accident and sickness” authority, AND 1 **PC** appointment from an insurer with property & casualty authority.

Insurers should be able to extrapolate from the above examples in determining what types of appointment to file.

### **Single Appointment may support multiple licenses**

A single appointment may support more than one license at the same time. For example: An agent holding both a Life & Annuities license and a Health license needs only 1 LH appointment to be in effect to support both licenses. Conversely, however, this means that if the last LH appointment is terminated, and a new LH appointment is not obtained within 6 months, BOTH licenses will terminate.

### **Electronic Appointments**

Insurers are encouraged to make use of the ability to submit appointments and appointment terminations electronically. Electronic appointments and terminations save time, effort, and paper on both ends of the transaction. For further information, insurers should contact the National Insurance Producer Registry through its web site at:

[http://www.licenseregistry.com/nipr\\_information/address.html](http://www.licenseregistry.com/nipr_information/address.html)

### **Dual Appointments**

In most cases, a single appointment by an insurer will be sufficient. There are, however, certain instances, described in more detail above, where the authority that the appointing insurer wishes to impart to the licensee combines both Life/Health AND Property/Casualty.

For an individual insurer, the most common occurrence of this is where a **Property/Casualty insurer** whose authority includes “accident and sickness” insurance wants to appoint an agent to sell all of its lines of business. In this case, the agent would have to hold licenses authorizing him to sell both accident and sickness (i.e. “health”) insurance and property/casualty insurance. The company would have to appoint the agent with a **LH** appointment under the license authorizing the agent to sell health insurance AND with a **PC** appointment under the license authorizing the agent to sell property/casualty insurance.

Other examples, described above, relate to those holding the Limited Lines Credit license and the Motor Vehicle Rental Contract license.

### **Appointment termination**

Additional notice requirements and filing deadlines, almost verbatim from PLMA, are placed upon insurers and agents when an appointment is terminated for "cause". This includes notice to the Commission, immunity provisions, and protection of confidentiality of documentation. **[See § 38.2-1834.1]** Insurers, agencies and agents are urged to review these new provisions.

*Note: 2002 legislation corrected an error in § 38.2-1834.1 E 1 to make it clear that information is protected when collected or provided in an investigation by the Commission pursuant to the **whole** of Chapter 18, rather than pursuant only to § 38.2-1834.1.*

**WE REMIND INSURERS THAT THE BURDEN OF DETERMINING THE APPROPRIATE APPOINTMENT TYPE, FILING IT CORRECTLY, AND PAYING THE APPOINTMENT PROCESSING FEE (EVEN IF THE APPOINTMENT IS REJECTED) RESTS ENTIRELY WITH THEM.**

### **The Interactive Voice Response (IVR) System**

THE NEED TO VERIFY THE AGENT'S LICENSE AUTHORITY BEFORE THE APPOINTMENT IS SUBMITTED IS VITAL.

THE BEST ALTERNATIVE is to utilize the Bureau's IVR system, which allows insurers to verify the license status of an individual or business entity quickly and efficiently, 24 hours per day, 7 days per week, using the Bureau's Interactive Voice Response (IVR) telephone number: (804) 371-9631.

THE NEXT BEST ALTERNATIVE is to ask the individual or business entity to obtain a certification from the Bureau.

THE WORST ALTERNATIVE is to ask the individual or business entity to send a copy of the license. Remember that Virginia licenses are perpetual, so a copy of a license issued a number of years ago may not necessarily be current.

The IVR system is an advanced telephone system which combines the best attributes of technology and human resources to provide complete customer service. Our IVR System allows you to obtain information at your convenience, 24 hours a day, seven days a week. However, there are certain times when the licensing and appointment information will not be available due to system maintenance. The schedule for the system to be down is as follows:

Monday - Friday from 7 p.m. - 9 p.m.  
Thursday - 3 a.m. - 5 a.m.  
Sunday - 4 a.m. - 8 a.m.

Some of the specific features you may find useful are:

- Audiotext which, with the use of a touch-tone phone, directs your call to the area of interest to you
- Ability to obtain license and appointment information

- Explanation of licensing procedures
- Ability to have forms and procedures faxed to you

### **NAVIGATING THROUGH THE IVR SYSTEM**

Upon entering the IVR system, you will be able to access information from one of five areas:

1. Licensing Information on a particular agent or agency
2. Appointment Information on an agent or agency with a particular Insurance Carrier
3. Procedures – various Bureau licensing and other procedures may be selected from a menu, and you may either listen to the procedure or have it faxed to you.
4. Fax Back System – select from a menu of various forms, procedures and other documents to be faxed to you
5. Confirm that you have the Bureau's current Mailing and Overnight Addresses

Press \* at any time to return to the Main Menu.

If you need to speak directly with one of our licensing staff (Monday through Friday 8:15 - 5:00) you may Press **0** at any time while you are in the IVR system and we will respond to your call in the order received.

### **QUICK REFERENCE FOR IVR INQUIRIES**

#### **Agent Licensing Information**

Press 1 from Main Menu  
Press 1 for Agent Licensing Information  
Enter 9-digit Social Security Number  
Press 1 if number entered is correct  
Press 2 if number entered is incorrect  
Select License Type by following instructions OR  
Press 9 for All License Types

#### **Agency Licensing Information**

Press 1 from Main Menu  
Press 2 for Agency Licensing Information  
Enter 9-digit Tax Id Number  
Press 1 if number entered is correct  
Press 2 if number entered is incorrect  
Select License Type by following instructions OR  
Press 9 for All License Types

#### **Appointment Information for Agent**

Press 2 from Main Menu  
Enter NAIC Number  
Press 1 if NAIC Number entered is correct  
Press 2 if NAIC Number entered is incorrect  
Press 1 to check appointment status for agent  
Enter 9-digit Social Security Number

Press 1 if number entered is correct  
Press 2 if number entered is incorrect

### **Appointment Information for Agency**

Press 2 from Main Menu  
Enter NAIC Number  
Press 1 if NAIC Number entered is correct  
Press 2 if NAIC Number entered is incorrect  
Press 2 to check appointment status for agency  
Enter 9-digit Tax Id Number  
Press 1 if number entered is correct  
Press 2 if number entered is incorrect

### **Appointment fees**

- Until July 1, 2001, the appointment fee (\$14) was charged to the insurer only where the appointment was successfully processed. Insurers had no incentive to check their own records or to verify the agent's license authority before submitting appointments because there was no penalty imposed when they failed to do so. This resulted in a large number of invalid and rejected appointments, usually where either the agent did not hold a Virginia license or where the insurer already had an appointment on file for the agent. This problem was compounded as companies began filing appointments electronically. The Bureau concluded that the only reasonable means of addressing this growing problem was to impose the appointment fee as a nonrefundable appointment processing fee applicable to each transaction, regardless of whether the appointment is successfully processed. This change, we believe should serve as an incentive for insurers to check their appointment records more carefully, and, more importantly, verify that an agent is properly licensed before accepting business from that agent. We have provided, above, instructions as to how insurers may access license AND appointment information about individuals or business entities at any time, through the Bureau's IVR system. We urge insurers to take advantage of this service. **[See §§ 38.2-1833 C and 38.2-1834 B]**
- The statutory maximum for the appointment fee has been set at \$15 for many years. The current fee established by the Commission is \$14. For the simple purpose of anticipating possible future increases to cover increased processing and resource costs as the Bureau moves forward in automating the licensing and appointment processes, the maximum statutory fee has been raised to \$25. However, there are no plans at this time to increase the fee from its current level of \$14. **[See § 38.2-1833 C]**
- Until July 1, 2001, appointment and appointment renewal fees were billed on a quarterly basis. Quarterly appointment fees were due "immediately" upon receipt of the bill by the insurer; annual renewal fees were due on or before August 1. However, there was no statutory sanction for those insurers who paid late or not at all until the next quarterly billing. The law was changed, effective July 1, 2001, as follows:
  1. First, instead of being due "immediately," quarterly billings are now payable 40 calendar days after posting, which gives insurers a more reasonable period of time in which to remit payment. However, failure by the insurer to remit payment so as to be received by the due date now results in an automatic penalty of \$50 per calendar day until payment is received

in full. **[See § 38.2-1833 H]** We expected and found there to be a learning curve regarding this new requirement, and a number of insurers have found themselves required to pay the statutory late penalty for missing the appointment (or appointment renewal) deadline. Our long-term goal is that everyone will remit appointment fees in a timely manner, and we will not have to assess ANY penalties.

2. Second, the Commission now has the statutory right (but not the obligation) to terminate any appointments or appointment renewals for which the appointment fee or renewal fee has not been paid by the statutory deadline. Some insurers have attempted to avoid payment of the penalty by simply submitting the overdue fee. It is our position that failure to pay the penalty is continuing noncompliance. A company that pays the overdue appointment or appointment renewal fee but fails to pay the \$50 per day penalty will remain subject to the administrative appointment termination sanction described above.
3. It is anticipated that the option to terminate appointments will be utilized only where an insurer has been dilatory on an habitual basis, or where payment is inordinately late, or where the insurer ignores repeated warnings. **[See §§ 38.2-1833 and 38.2-1834]**

### **MISCELLANEOUS DISCLOSURE AND DISCIPLINARY ACTIONS**

#### **New Ocean Marine insurance disclosure requirement for agents**

A new subsection has been added to § 38.2-1802, requiring licensed agents who sell, solicit, or negotiate ocean marine insurance on behalf of an unlicensed insurer to give a notice to the insured (prior to placement of the insurance) advising the insured that, in the event of an insolvency, there will be no protection under the Virginia Property and Casualty Insurance Guaranty Association. The notice must also state that the insured may not be protected under the insurance laws of the Commonwealth. This requirement has been added to the code to make consumers aware that the Bureau may not be able to help them if a problem arises when coverage has been placed with an unlicensed insurer. The notice must be signed and dated by the agent and the insured, and the agent must keep a copy of the notice for three years. The Commission has prescribed the content of this notice, which is available on the Bureau's web site at:

<http://www.state.va.us/scc/division/boi/webpages/unlicensedoceanmarinedisclosure.htm>.

**[See § 38.2-1802 D]**

#### **Expanded grounds for refusal to issue a license or for license revocation, suspension or probation –**

The Commission's grounds for refusal to issue a license, or revoke or suspend a license or place a licensee on probation have been conformed to the PLMA. With minor necessary variations, similar grounds now exist with regard to all NSL licenses as well. These sanctions are in addition to the Commission's right to impose a fine or other penalty pursuant to § 38.2-218. The grounds are **[See § 38.2-1831]**:

1. Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission;
2. Violating any insurance laws, or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;
4. Engaging in the practice of rebating;
5. Engaging in twisting or any form thereof, where "twisting" means inducing an insured to terminate an existing policy and purchase a new policy through misrepresentation;
6. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
7. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
8. Having admitted or been found to have committed any insurance unfair trade practice or fraud;
9. Having been convicted of a felony;
10. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;
11. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
12. Forging another's name to an application for insurance or to any document related to an insurance transaction;
13. Improperly using notes or any other reference material to complete an examination for an insurance license;
14. Knowingly accepting insurance business from an individual who is not licensed;
15. Failing to comply with an administrative or court order imposing a child support obligation; or
16. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

The Commission is also given greater leeway in determining when a licensee whose license has been revoked may re-apply for licensure. It should be noted that the right to re-apply does NOT necessarily mean that the license application will be approved; the Commission retains the right to refuse to issue a new license. Under prior law, the Commission could not prohibit a licensee whose license was revoked from re-applying after the expiration of a two year period. Under the new law, however, the period is automatically five years unless the Commission establishes a lesser or greater amount of time in its Order. **[See § 38.2-1832 A]**

#### **New accountability for business entities -**

Specific provisions have been added to provide accountability for licensed business entities in the area of disciplinary proceedings against their agents and employees. Under these new accountability provisions, the license of a business entity may be suspended, revoked or refused if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers or managers acting on behalf of the business entity, and the violation was neither reported to the Commission nor corrective action taken. **[See § 38.2-1832 B]**

## CONTINUING EDUCATION

Virginia's insurance agent continuing education program was created in 1993, with the assistance of industry and agent association representatives. The program is administered by the Virginia Insurance Continuing Education Board, which consists of 12 representatives of various constituency groups appointed by the Commissioner of Insurance. The Board, in turn, contracts with an outside administrator (currently Experior Assessments, LLC) for day-to-day operation of the program.

The Bureau made a concerted effort over the years to establish reciprocity agreements with as many states as possible. Virginia was often the first state to contact another state that had just created its own continuing education program, asking that state to execute a reciprocity agreement. At present, all states have some form of continuing education, and Virginia is reciprocal with all of them. Until January 1, 2003, however, reciprocity is through individual agreements rather than by statute.

Because Virginia's continuing education program operates on a biennial basis, with a new biennium beginning on January 1, 2003, the law implementing reciprocity will not take effect until that date. Effective for the biennium beginning on January 1, 2003, however, continuing education requirements have been made fully reciprocal for agents and consultants who satisfy whatever level of continuing education is required in their home state, and who provide satisfactory certification thereof. **[See § 38.2-1869 B]**

*NOTE: We would remind agents and other interested parties that **NONRESIDENTS**, while not required to complete Virginia hourly course requirements, **ARE AND WILL CONTINUE TO BE REQUIRED TO COMPLY WITH VIRGINIA'S CE LAW** by submitting to the Board's administrator (Experior) proof of home state continuing education compliance (usually in the form of a Letter of Certification) and paying the requisite filing fee so that all required documents and fees are **RECEIVED** by Experior on or before the the statutory deadlines. Failure to do so will result in license termination in Virginia.*

There are no substantive changes to the program for the current (2001-2002) biennium. All requirements will remain the same, as will course completion and filing deadlines. See the attached **CONVERSION TABLE** for the new licenses subject to continuing education. As discussed earlier, even the separation of the existing Life & Health license into separate "Life & Annuity" and "Health" licenses will have no impact upon the number of hours or types of courses the resident licensee will be required to complete.

The latest edition of the Board's *Virginia Insurance Continuing Education Handbook* provides additional detail on the continuing education program. One substantive change that will take effect beginning in the 2003-2004 biennium is that the exemption for resident licensees who passed the prelicensing examination and obtained their license during the first year of the biennium is eliminated. This exemption was based upon the presumption that the licensee had completed a pre-licensing study course prior to taking the examination. With the elimination of the pre-licensing study course requirement, this presumption is no longer valid. Therefore, all resident licensees who become licensed in the first year of the biennium (commencing with the

2003-2004 biennium) and are issued one or more of the licenses for which continuing education is required **will** be subject to continuing education requirements.

### **CONVERSION TABLE AND TABLE OF LICENSE TYPES**

Throughout this document, reference has been made to the Conversion Table and Table of License Types.

Both documents are attached to and made a part of this administrative letter.

The **CONVERSION TABLE** shows all of the license types that **WERE** being issued prior to September 1, 2002, what license types will **NOW** be issued in their stead (including to those current licensees who will automatically receive converted licenses), whether a prelicensing examination is required, and whether the license is subject to continuing education requirements.

The **TABLE OF LICENSE TYPES** shows for each of the license types that will be issued on and after September 1, 2002, the lines of insurance that the licensee will be authorized to sell, solicit and negotiate in Virginia under that license.

It is our hope that the contents of this administrative letter will provide useful information to the insurers, agents, and agencies, and we encourage its wide dissemination. As stated at the outset, this letter is currently available (or will be available shortly) through the Bureau's Web site, from which it may readily be downloaded, copied, printed, and otherwise disseminated.

Questions regarding the content of this letter should be directed to the Bureau's Agents Licensing Section at (804) 371-9631.

Sincerely,

Alfred W. Gross  
Commissioner of Insurance

AWG/me  
Enclosure