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DEPARTMENT OF COMMERCE AND INSURANCE
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October 2, 2013

Ryan J. Garrison
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Scottsdale, AZ 85258
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Re: Interpretive Opinion No. 05-13, Permissibility of an Insurance Producer Sharing Commissions with Unlicensed Individuals and/or Entities for the Referral of Clients

Dear Mr. Garrison,

The Division of Insurance of the Tennessee Department of Commerce and Insurance ("Division") is in receipt of your request for clarification on whether it is permissible for a Tennessee licensed insurance producer to share commissions with other entities and/or individuals for client referrals that result in a successful sale of insurance products. The Division is treating this letter as a request for an Interpretive Opinion.

Specifically, your letter asked the Division to clarify whether, 1) commission sharing with entities and/or individuals, such as property and casualty companies or third party administrators, for their referral of clients is permitted in Tennessee, and 2) if such entities and/or individuals must be licensed as an insurance producer to receive the shared commissions. In addition, you have requested that the Division provide reference to any other rules or regulations governing this topic.

The facts are understood by the Division as follows: You, as a structured settlement broker, and a Tennessee licensed insurance producer, engage in the sale of fixed annuities and wish to share commissions with individuals and/or entities as compensation for client referrals; the referrals would be made by various entities and/or individuals, such as property and casualty companies, self-insurers, and claim management companies commonly referred to as third party administrators; in return, commissions made from these referred clients would be shared with the referring entity and/or individual for an unspecified amount.

It is the current position of the Division that all fees paid as compensation for ***referrals*** are governed by the rules of Tenn. Code Ann. § 56-6-113(e), which provides as follows:

> An unlicensed person may make a referral to a licensed producer; provided that the person does not discuss the specific insurance policy terms and conditions. Except as prohibited by federal law, the unlicensed person may be compensated for the referral; however, an unlicensed person who is neither employed by nor affiliated with the insurance producer may be compensated only if the compensation is a fixed dollar amount, not to exceed twenty-five dollars ($25.00) or such lesser amount as the commissioner may establish by rule, for each referral. An unlicensed person who is either employed by or affiliated with the insurance producer may be compensated only if the compensation is a fixed nominal dollar amount. In either event, the referral compensation shall not depend on whether the referred customer purchases an insurance product from the licensed producer.

Therefore, a licensed agent in this state is permitted to compensate unlicensed individuals and/or entities for referrals as long as the compensation is a fixed dollar amount. Based on the facts provided, the recipients of referral compensation would not be employed by or affiliated with you as an insurance producer and therefore the fixed fee cannot exceed twenty-five dollars ($25). Nor may the referral compensation being paid depend on the success of the sale. All referrals must be compensated despite the outcome of the customer's purchases.

The Division recognizes the conflicting statutory language of Tenn. Code Ann. § 56-6-113(d) allowing the payment of commissions to unlicensed individuals and/or entities as long as payment is not in violation of Tenn. Code Ann. § 56-8-104(5) and (8). However, it is the position of the Division that arrangements involving referrals are governed by Tenn. Code Ann. § 56-6-113(e) as it is specifically written to regulate referral fees. Tennessee case law provides, that in instances of conflicting law, "Specific statutory language will control over general conflicting statutory provisions." Nathan E. Steppach, Jr. v. William H. Thomas. Jr., 346 S.W.3d 488, 506 (Tenn. Ct App. 2011). Based on the facts provided, Tenn. Code Ann. § 56-6-113(e) applies.

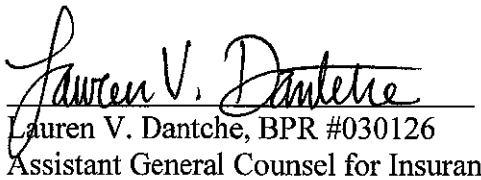
Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This letter expresses the Division's position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication of use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation relating to the regulation of referral fees and commission sharing regulated under the Tennessee Insurance Producer Licensing Act of 2002 and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different

response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Ryan J. Garrison could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.

Nancy S. Jones,
Deputy Commissioner and General Counsel

By: 

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