



A COMPLETE GUIDE TO:

# Starting an Independent Insurance Agency

in Delaware



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## DISCLAIMER

*This document is not a legal opinion and should not be relied upon as such. The intent of this document is to provide a general background regarding the topic or topics discussed, not to provide legal advice. Producers and agencies should consult an attorney regarding specific situations and specific questions with respect to the topic or topics covered in this document. Neither the Insurance Agents & Brokers nor any of its employees shall be responsible for any errors or omissions regarding any statements made in this document, nor any errors or omissions regarding any statutes, regulations, court rules, and/or any other government documents cited in this document.*

# CHAPTER 1

## The Independent Agency Operation

IA&B is a professional association representing independent insurance agents in Pennsylvania, Maryland, and Delaware. Our member agencies write mostly property and casualty insurance, but many agencies also sell financial services such as life and health insurance. The property and casualty business divides broadly into personal lines, the largest of which is auto, and commercial lines, which encompass a broad range of products for businesses.

Property and casualty insurers range from national, multi-line giants to tiny, policyholder-owned farm mutuals. A distinguishing feature of insurance companies relates to their marketing methods. Some secure their business through agents and brokers, while others secure production through their own employees. The former are known as agency companies, the latter as direct writers. Some companies operate both ways.

The methods by which insurance is accepted by insurance companies may be divided as follows:

- ▲ Through the independent agency system (the American Agency System).
- ▲ Through a controlled agency system (exclusive agents).
- ▲ Through company employees (direct writers).
- ▲ Through brokers.

Agencies having one or more direct appointment(s) with an insurance company subscribing to the American Agency System are eligible for IA&B membership. We subscribe to the definition of American Agency System whereby the agent owns the records and expirations of the policies issued through them and is able to represent more than one company. As such, the focus of this resource is to guide you through the process of creating an independent agency.

## Independent Agency System Compared to Other Distribution Methods

The independent agency system produces the overwhelming majority of property and casualty volume. Those who operate under this method maintain contracts or agency agreements with various companies and are compensated on a commission basis. The agent places business with companies of his own choosing based upon the needs/fit for the client.

The cornerstone of the system is ownership of expirations; i.e., the agent, not the company, owns the business produced. The great majority of stock companies and a large number of mutual companies operate exclusively through the independent agency system. Member agencies of IA&B are independent agents.

Insurance companies have various departments. Different companies have their own department names and divisions, but those found in most companies will include:

1. Administration: internal operations.
2. Sales: production of business.
3. Underwriting: control of type and quality of business accepted, rejected.
4. Claims: processing of losses.
5. Accounting: collection of premiums.
6. Financial or investment of company surplus funds.

In comparison, an agent who represents only one insurer is called an exclusive agent or a captive agent. Most of the life insurance production is accomplished through this system, and a few specialty companies write a significant volume in the property and casualty field. While there are variances, the exclusive agent's activities are usually concentrated almost entirely on sales (as contrasted to "full line" service by independent agents). This agent does not own the expirations and is compensated at lower commissions in view of the agent's more limited function.

Companies producing through salaried employees are direct writers. This category would include companies which sell by mail and the internet.

A broker operates somewhat like an independent agent, compensated by commissions, but does not place business under contract with the insurance company. Brokers represent the buyer's interest only. While there are many who handle all the same classes of business as an independent agent, they are thought of principally as handlers of large commercial and industrial accounts and often have branch offices throughout a geographical region or the entire country. Some of the larger brokerage firms have offices worldwide, such as Willis Towers Watson, AON, and Marsh McLennan (Marsh).

## Independent Agency Operations

This is a difficult area to cover in a generalized way because every independent agency has their own methods which make their agency unique. However, while they may take differing forms, the following functions must be performed in the independent insurance agency operation:

### **Sales**

There usually is not a separate sales division. Along with other duties, the principal(s) and sometimes producer(s) are responsible for the sales function. Many agents assign at least a portion of the sales responsibility to the licensed clerical staff (for example, "walk-in" business that may be handled without any particular complications).

### **Policy Writing**

Independent agencies vary from those that physically prepare most of their policies to those who prepare few or none. When a policy is not to be issued in the agency office, an application or various instructions are sent to the company.

### **Claims**

In larger agencies this may be a full department but is usually a shared duty involving acceptance and processing of claim and accident reports.

### **Bookkeeping and Accounting**

A bookkeeping process must be performed for every policy issued, for every additional or return premium processed, for every receipt of premium, and for every check issued. Each company must be accounted to for all premiums and adjustments effected in its behalf. A collections system must exist as the independent agent, not the company, is responsible for premium collections.

### **Miscellaneous Service**

Insureds frequently telephone or come into the agency office for counsel, advice, and other matters. Necessary changes in existing policies must be processed.

### **Agency Records**

Copies of all policies and endorsements issued, correspondence, claim reports, a chronological record of expirations, an alphabetical list of insureds, and other information must be systematically filed. Supplies from companies' policies, endorsements, and the like must be kept in orderly fashion.

To give an idea of contrasts, the division of responsibilities in agencies of widely varying sizes might be considered. A typical large agency may have several principals who concern themselves with sales and servicing of the larger accounts. Producers or account executives may be employed, concentrating principally on sales with some service responsibilities. An office manager might also be in charge of underwriting and selection of companies into which business is placed. A personal lines division may handle all home and personal coverages, including policy writing, changes, and some sales. This division might be further broken down as to those handling automobile insurance and those handling other personal lines. A commercial lines division does all processing on non-personal accounts. There may be a life division handling life and disability as a specialty item. Full-time individuals handle bookkeeping, claims, secretarial, receptionist, filing, and mailing duties.

The agency pictured above might have 20 to 30 employees or more. Consider now the two-person operation, which is numerically much more prevalent. The principal/owner handles sales, underwriting, relationships with companies, collections, and gets involved in varying degrees of miscellaneous service. His or her assistant is the receptionist, secretary, policy writer, underwriter, handler of routine walk-in and telephone situations, bookkeeper, claims processor, and doer of whatever else needs doing.

# CHAPTER 2

## Taking the First Step

The first step in starting your agency is to obtain your insurance license. In all states, the process of obtaining a license is regulated by the Insurance Department through law.

### Pre-licensing Requirements

Some states have a mandatory requirement that must be fulfilled before you can sit for the licensing exam. Delaware does not currently impose a pre-licensing requirement before allowing a candidate to sit in for the licensing examination.

### Getting & Maintaining Your License

Once you have passed the examination, applied for and secured your license, you will need to maintain it. To do so, you are required by the state's licensing law to continue your education once getting licensed. It is extremely important for insurance agents to keep up to date on issues concerning clients and coverage changes. Changes in laws and state/federal regulations can affect the insurance needs of clients and the way in which agents conduct business. Agents can enhance their selling skills and broaden their knowledge of insurance and other financial services by taking courses and attending institutes, conferences, and seminars sponsored by IA&B. To understand the requirement of this state, we have compiled the following reminders.

Below are the applicable continuing education (CE) and training requirements in your state. Keep in mind that training may not be monitored by the regulator, but still have a bearing on your ability to sell, solicit, or negotiate the line of business affected.

## Delaware Continuing Education (CE) & Training Requirements

### General Requirement

- ▲ Producers are required to complete twenty-four (24) credit hours of continuing education.

### Flood

- ▲ Any resident licensee who writes flood insurance under the National Flood Insurance Program must complete a two (2) hour continuing education course related to flood insurance and the National Flood Insurance Program. Effective Dec. 11, 2015, this requirement no longer applies to producers authorized to write homeowners' or personal lines coverage but to producers who sell flood insurance.

### Long-Term Care

- ▲ If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product knowledge, laws, rules, and regulations.
- ▲ Bulletin 63 of 2013 states that producer training must be established to address the requirements of the Deficit Reduction Act of 2005, in particular for Partnership policies (see paragraph J). [Delaware was the only state that had not published any requirements in that area. It appears that for the time being, Delaware is relying on issuers (carriers) to monitor that the training required by the Deficit Reduction Act was completed.]

### Ethics

- ▲ Of the 24 general credit hours required, three hours must be in ethics -- biennially by Feb. 28 of every even year.

### Annuity Education/Training

- ▲ Effective June 1, 2017, all life and annuity producers (resident and non-resident) must complete a one-time, four-hour approved training course. The training must be completed prior to selling, soliciting, or negotiating these products by Nov. 29, 2017.
- ▲ A non-resident producer may comply by providing a certificate of completion from a course that has been approved in Delaware or in a state that has adopted the 2010 NAIC Suitability in Annuity Transactions Model Regulation.
- ▲ Revised regulation 1214, section 5.0

### Pet Insurance Training

- ▲ Before selling, soliciting or negotiating a pet insurance product, an insurance producer must complete carrier training on the product in question and some of its features.

### Other Items

- ▲ A newly licensed producer does not need to earn any continuing education credits in the first two years in which she becomes licensed if she was licensed after the beginning of a CE cycle, which is March 1 of every even year.
- ▲ Producers can carry over up to 5 credits. Ethics credits cannot be carried over.
- ▲ A course can only be credited once during a CE cycle. If a course is repeated in the same licensing period, it will only count once. Be particularly mindful of this if you hold a designation (e.g. CIC, CISR) that requires annual updates: Taking the same institute two years in a row will update your designation, but not count towards CE if it is taken in the same licensing period.
- ▲ License renewals are mailed to the licensees 90 days prior to the due date.
- ▲ Both resident and non-resident licensees may renew electronically. The renewal notice will provide information on how to renew online.
- ▲ Your agency needs to have a procedure to make sure that the partnership or corporation and all individuals' expiration dates in the agency are logged and monitored to assure that no licenses expire without being renewed.
- ▲ If you are a resident and you have not received your CE transcript or if you are a nonresident and you have not received your memo by mid-November, you should call the Department of Insurance (DOI). The time to notify the DOI is before your license expires.
- ▲ Producers continuously licensed for 25 years or more at the beginning of their licensing period (or who hold a specifically approved professional designation) are eligible for automatic twelve credit hours. These automatic credits cannot be applied to any required flood, ethics, or LTC credits (see above).

### Regulation

- ▲ Regulation 504

## Continuing Education Opportunities

In order to assist you in staying professional and in good standing with the Insurance Department, we have become a premier provider of continuing education courses for independent agents. We offer many opportunities, including half-day webinars, one-day webinars, and in-person classes on a variety of subjects. In addition to our core offerings, we offer more advanced and nationally recognized professional designation programs that certify an agent's expertise. Although voluntary, such programs demonstrate to clients and employers that an agent has completed training of a relevant specialty.

IA&B offers these professional designations, training programs, and seminars:

- ▲ Certified Insurance Counselor (CIC) designation
- ▲ Certified Insurance Service Representative (CISR) designation
- ▲ Certified Professional Insurance Agent (CPIA) designation
- ▲ Errors and Omissions (E&O) prevention seminars
- ▲ Special topic seminars
- ▲ Licensing exam preparation seminars and self-study courses



# CHAPTER 3

## Creating Your Business and Licensing Your Agency

The next step in creating your own independent agency is to choose your business structure. There are many legal and tax considerations in creating a business, and this section will assist you in becoming more knowledgeable as you prepare to meet with the experts who will assist in forming your business.

### Choosing Your Business Structure

You must examine all of the characteristics and consult a knowledgeable legal professional when considering the formation of your business. Legal and tax considerations, as well as personal needs and the needs of the business, will help to determine your final choice. Special thanks to Delaware Corporations LLC for sharing this content. Here are your choices:

#### **Sole Proprietorship**

The simplest form of business enterprise is a sole proprietorship. The business is conducted by an individual after obtaining the necessary licenses, permits, and other documents necessary to commence business. If conducted under a trade name, a "fictitious name filing" is required to notify the public of the use of a trade name by the sole proprietor. Because there are no formation or operational formalities, a sole proprietorship is very simple to start, operate, and terminate. A sole proprietorship does not involve the creation of a legal entity separate from the proprietor. As a result, the sole proprietor is personally liable for all debts and obligations of the business and there is no continuity of business in the event of disability or death. The only way to transfer ownership of the business is through the sale of the assets used in the business.

#### **Corporation**

Probably the most common and best understood form of business entity, a corporation is an entity formed under state or federal law. It is separate and distinct from its owners, and it may acquire, hold, and dispose of property, conduct its business, and sue or be sued in its own name. The relative rights and duties of the corporation, its owners, and its management are largely defined by statute and by the corporation's certificate of incorporation and bylaws.

Most corporations are organized as stock corporations and issue stock to evidence ownership. Under appropriate circumstances, a corporation may be formed as a nonstock, membership corporation. Stockholders in small corporations often chose to enter into a stockholders' agreement to regulate the voting and transfer of stock in order to better protect their investment.

As a separate entity, a corporation is liable for its debts and other obligations. Except under unusual circumstances, stockholders, directors, and officers of a corporation are not personally liable for the corporation's obligations.

Management of a corporation generally rests with its board of directors, who are elected by the stockholders. Other than the right to elect directors and approve certain transactions, such as mergers, sale of all assets, and dissolution, stockholders have no role in managing a corporation. When formed as a statutory "close corporation," management may be vested in the stockholders in lieu of a board of directors.

Delaware corporations:

- ▲ Have no minimum capital requirement
- ▲ Do not require a principal place of business in Delaware
- ▲ Allow one person to be the sole director, officer, and stockholder
- ▲ Have no residency requirement for directors, officers, or stockholders

A special type of corporation, known as the "professional corporation," exists for licensed professionals, such as doctors, architects, accountants, and attorneys, who by law or ethical rules may not practice in the form of a regular corporation. The salient features of the professional corporation are that only licensed professionals may be stockholders, each stockholder participates as a director in the management of the business, and each stockholder remains personally liable for his or her own professional negligence or malpractice and that of any other stockholder, employee, or agent working under the stockholder's supervision and control.

### **General Partnership**

A general partnership is simply an association of two or more people to carry on a business as co-owners. No formalities are required to create a general partnership. Thus, a general partnership may arise out of the conduct and actions of the parties, or pursuant to an oral agreement. It is prudent, however, to use a written agreement that specifies the respective rights and duties of the partners. Where no agreement exists, the Revised Uniform Partnership Act provides some rules for the creation, operation, dissolution, and termination of a general partnership, but it is not a good substitute for an agreement.

The distinguishing features of a general partnership are that each partner is an agent for the partnership with the power to legally bind the partnership and each partner is personally liable for the debts and obligations of the partnership. Most business decisions may be made by a majority of the partners, although some matters, such as admission of a new partner, will require unanimous agreement.

For non-tax purposes, a Delaware general partnership is a separate entity from its partners, may conduct business, acquire, hold, and dispose of property, and sue and be sued in its name, without the need to join all partners as parties.

### **Limited Liability Partnership**

Delaware authorizes a special form of general partnership known as a limited liability partnership. In a limited liability partnership, the partnership is required to register with the Delaware Secretary of State and maintain a specified amount of liability insurance. In return, partners are relieved of personal liability for obligations of the partnership. Partners remain personally liable for their own negligence or misconduct and that of persons under their direct supervision and control. The limited liability partnership is attractive to professionals who want the benefits of the partnership form but without the personal liability for the professional misconduct of other partners and employees.

### **Limited Partnership**

A limited partnership is a special form of partnership created by the filing of a certificate of limited partnership with the Delaware Secretary of State pursuant to statutory requirements. The relation among partners is governed primarily by a partnership agreement. While the agreement may be oral, use of a written agreement is almost always advisable. The Revised Uniform Limited Partnership Act provides some rules regulating the relative rights of partners and the management, dissolution, and termination of a limited partnership. Because such statutory rules may, in most cases, be altered by agreement among the partners, to obtain maximum benefits from the limited partnership form requires a written partnership agreement tailored to specific circumstances.

Like a corporation, a limited partnership is a separate legal entity from its partners. A limited partnership must have at least one general partner and at least one limited partner. The principal distinguishing feature of a limited partnership is that the limited partners are not personally liable for the debts and obligations of the partnership. The general partner remains fully liable. Thus, limited partners risk only their invested capital. Historically the price for limited liability was that limited partners could have no participation in management of the partnership, which was vested entirely in the general partner. Delaware's current limited partnership laws provide great flexibility in this area, however, and it is possible to structure a limited partnership agreement that gives considerable management participation to limited partners without jeopardizing their limited liability.

Without loss of limited liability, limited partners may:

- ▲ Transact business with the limited partnership.
- ▲ Be a control person of a general partner.
- ▲ Consult with and advise the general partner.
- ▲ Serve on a committee of limited partners.
- ▲ Vote on matters such as dissolution, a sale of assets, a merger, and admission or removal of a general partner.

Limited partnerships may become limited liability limited partnerships, and thereby provide the general partner with the same protection from personal liability afforded by general partners in a limited liability partnership.

### **Limited Liability Company**

A limited liability company is one of the more recent and most flexible business structures available in Delaware. Formed by filing a certificate of formation with the Delaware Secretary of State, a limited liability company is a separate legal entity having the power to conduct business, acquire, hold and dispose of property, and sue or be sued in its own name. A limited liability company may have as few as one member. Management may be by the members or by selected managers who may or may not be members themselves. As with limited partnerships, the relation among members and the management structure are typically set forth in a written limited liability company agreement. A limited liability company agreement may provide for various classes of members and managers and their respective rights, powers, and duties, and it may also set forth the manner of allocation of profits and losses of a limited liability company to its members. Principal attributes of a limited liability company include: (i) any member or manager may bind a limited liability company, (ii) except in certain limited situations, no member or manager is personally liable for the debts or obligations of a limited liability company, and (iii) perpetual existence. The foregoing may be changed by express provision in the limited liability company agreement.

### **Joint Venture**

From a strict legal view, a joint venture is simply a general partnership formed to pursue a single business venture that is limited in scope and duration. Today, however, the term joint venture is commonly used to describe a business venture undertaken by two or more existing businesses seeking to combine their resources to exploit a particular aspect of their respective businesses. Such a joint venture may take any form except that of a sole proprietorship, and commonly is organized as a corporation, partnership, limited partnership, or limited liability company.

### **Sources for Additional Information**

- ▲ [DE Division of Corporations](#) - maintains the records of the companies that do business in Delaware.
- ▲ [Delaware's One Stop Business Registration and Licensing System](#) - register your business with the Division of Revenue, the Division of Unemployment Insurance, and the Office of Workers Compensation.
- ▲ [IRS.gov](#) - resources from the federal government for starting a business.

## **Licensing Your Agency**

Once your business is registered with the Delaware Department of State, you can turn your attention to getting your agency licensed.

- ▲ In addition to the individual license required of every person selling insurance, the producer licensing statute establishes requirements for agencies to be licensed as well.
- ▲ Sole proprietorships are not recognized as entities by corporate law and generally do not need a separate business entity license.

## Check Your State's Requirements

### General Requirements / How to Get a License

- ▲ A business entity selling insurance (corporation, association, partnership, LLC, and limited liability partnership or other legal entity) must apply for its own license.
- ▲ The business must also identify a designated producer.
- ▲ Additionally, corporations and LLCs must register with the Delaware Division of Corporations. This should be done prior to applying for the license.
- ▲ Individual producers working for the agency must be appointed by the company. The DOI only requires individuals to be appointed, not entities. The insurer must appoint the producer within 15 days of execution of the agency contract or of submission of the first insurance application.

### What Is a Designated Producer?

- ▲ A business entity selling insurance (corporation, association, partnership, LLC, and limited liability partnership or other legal entity) must apply for its own license.
- ▲ The business must also identify a designated producer.
- ▲ Additionally, corporations and LLCs must register with the Delaware Division of Corporations. This should be done prior to applying for the license.
- ▲ Individual producers working for the agency must be appointed by the company. The DOI only requires individuals, not entities, to be appointed. The insurer must appoint the producer within 15 days of execution of the agency contract or of submission of the first insurance application.

### How to Get a License

All applications (for both individual and business entity licenses) must now be completed online through the [National Insurance Producer Registry](#) portal.

Before approving the application, the DOI will verify that:

- ▲ The business entity has paid the \$75 fee (required by Title 18 Del. Code, Chapter 7); and
- ▲ The business entity has identified a designated producer.

### Fictitious Name

The legal name of your business is the name of the person or entity which owns the business. For example, if you are registered as a sole proprietor, the legal name of your business may be your full name, and if you are registered as a partnership, the legal name is the name given in your partnership agreement, etc.

However, if you want your agency to be known by a different name, then you must file a "fictitious name" registration form with your the DOI and the relevant county's [Prothonotary's Office](#). A fictitious name is also known as an assumed name, trading-as (T/A) name, or doing-business-as (DBA) name since it is a business name different from the officially registered name of your corporation.

### Adding a Line of Authority to an Agency License

If an agency has a license to sell the property and casualty lines of authority and decides it wants to expand into other lines such as life or health, it must submit an application for an amended license to show the new lines of authority. An application can only be submitted if the agency's designated licensee (generally the principal) has individually passed the licensing examination for the additional line(s).

# CHAPTER 4

## Preparing Your Agency for a Carrier Appointment

Once you obtain your individual license and license your agency, you can't sell insurance without access to insurance companies or managing general agents. Most, if not all, property and casualty insurance carriers are looking for a long-term, profitable relationship. Getting appointed with a carrier usually requires:

- ▲ experience in the business,
- ▲ a proven track record of selling and marketing,
- ▲ a geographically desirable marketing territory,
- ▲ a solid proposed business plan.

The ideal situation is to secure a direct appointment with established carriers as most offer competitive products and commission schedule and opportunities for growth. However, as a new agency, a direct appointment will be hard to come by since many carriers desire at least a few years of experience, a successful track record, and an existing book of business.

Access to markets may have to come from a combination of what direct appointments you can secure and indirect markets such as wholesalers, managing general agencies (MGAs), and possibly network aggregator organizations. A benefit in partnering with wholesalers and MGAs is that many have little or no volume commitments and compensate you per transaction through policy fees that sometimes can be passed onto the policyholder.

You might also explore joining an established insurance network. These organizations may provide assistance to new agents with access to otherwise unattainable markets and niche programs, and possibly the opportunity to obtain an eventual direct appointment. Some groups offer assistance with access to carriers with lower volume commitments and profit-sharing thresholds than with a direct appointment. You would have a chance to share in the network's profitability but in return, may pay a membership fee and percentage of commissions to the group. Be sure to review the contractual relationship with these entities carefully, especially as they relate to book ownership, commission or revenue sharing, and exit costs.

### Attracting Markets/Carriers

Companies seek to do business with those independent agents who they feel will most enable them to meet their profitability objectives, i.e., those who 1) use "best business practices," 2) want to work as a partner with the company, and 3) operate in favorable geographic and regulatory environments.

There are several factors insurers consider in evaluating agency representation. They include:

- ▲ Location and appearance — accessible to the public/desired clientele, professional operation.
- ▲ Financial information — consistent profitability, good collection practices.
- ▲ Type and mix of business — average types of clients, specializations or niches, retention rate, volume of nonstandard business.
- ▲ Other insurers represented — too many companies, duplication of markets, outlets for nonstandard accounts.
- ▲ Loss experience — shock losses or poor underwriting by producers.
- ▲ Personnel — professionalism, experience, little turnover.
- ▲ Business plan — projected growth areas, goals, ability to meet company production quotas.
- ▲ Perpetuation plan — who will be running the agency five years from now? Ten years? How are they going to be trained for the job? What financial arrangements are involved and how are they guaranteed to be available?

- ▲ Other insurers represented — how many (too many?) companies, duplication of markets, outlets for nonstandard accounts.
- ▲ Automation and IT — functions now being utilized, plans for the future, company interface capabilities.
- ▲ Completeness of submitted business — properly filled in applications, necessary data included (loss runs, pictures, etc.).

### **Writing a Business Plan**

As mentioned above, in order to convince an insurance carrier to give you an appointment, you will need to make a compelling case. Your business plan will help you do that. A business plan should be a living and breathing document. That's because your business will evolve over time and be influenced by outside factors such as the economy and local conditions. Even successful business owners should maintain a current business plan to ensure they remain knowledgeable on the elements that can affect continued success.

In addition to using your business plan to attract carriers to do business with you, it will provide the basis for your finance proposal, which is the document submitted to the financial community in order to get funding to start (or expand) your agency.

The information below was taken from the [U.S. Small Business Administration](#). The content is generic to starting most small businesses, and some suggestions may not be pertinent to your situation.

## **PART 1 – Business Plan Executive Summary**

This is the most important section of your plan. It provides a concise overview of the entire plan, along with the history of your company. This section tells your reader where your company is and where you want to take it. It's the first thing your readers see; therefore, it is the thing that will either grab their interest and make them want to keep reading or make them want to put it down and forget about it. More than anything else, this section is important because it tells the reader why you think your business idea will be successful.

The executive summary should be the last section you write. After you've worked out all the details of your plan, you'll be in a better position to summarize it -- and it should be a summary (for example, no more than four pages in length).

### **Contents of the Executive Summary**

The mission statement -- the mission statement briefly explains the thrust of your business. It could be two words, two sentences, a paragraph, or even a single image. It should be as direct and focused as possible, and it should leave the reader with a clear picture of what your business is all about.

- ▲ Date the business began
- ▲ Names of the founders and the functions they perform
- ▲ Number of employees
- ▲ Location of the business and any branches or subsidiaries
- ▲ Description of plant or facilities
- ▲ Products manufactured/services rendered
- ▲ Banking relationships and information regarding current investors
- ▲ Summary of company growth including financial or market highlights (for example, your company doubled its worth in a 12-month period; you became the first company in your industry to provide a certain service)
- ▲ Summary of management's future plans.

With the exception of the mission statement, all of the information in the executive summary should be highlighted in a brief, even bulleted, fashion. Remember, these facts are laid out in-depth within the plan itself.

If you're just starting a business, you won't have a lot of information to plug into the areas mentioned above. Instead, focus on your experience and background as well as the decisions that led you to start this particular enterprise. Include information about the problems your target market has and what solutions you provide. Show how the expertise you have will allow you to make significant inroads into the market. Tell your reader what you're going to do differently or better. Convince the reader that there is a need for your service or product, then go ahead and address your (the company's) future plans.

To assist the reader in locating specific sections in your business plan, include a table of contents directly following the executive summary. Make sure that the content titles are very broad; in other words, avoid detailed descriptions in your table of contents.

## PART 2 – Market Analysis

This section should illustrate your knowledge of the particular industry your business is in. It should also present general highlights and conclusions of any marketing research data you have collected; however, the specific details of your marketing research studies should be moved to the appendix section of your business plan.

This section should include: an industry description and outlook, target market information, market test results, lead times, and an evaluation of your competition.

### Industry Description and Outlook

This overview section should include: a description of your primary industry, the current size of the industry as well as its historic growth rate, trends, and characteristics related to the industry as a whole (i.e., What life cycle stage is the industry in? What is its projected growth rate?), and the major customer groups within the industry (i.e., businesses, governments, consumers, etc.).

### Identifying Your Target Market

Your target market is simply the market (or group of customers) that you want to target (or focus on and sell to). When you are defining your target market, it is important to narrow it to a manageable size. Many businesses make the mistake of trying to be everything to everybody. Often times, this philosophy leads to failure.

In this section, you should gather information which identifies the following:

- ▲ Distinguishing characteristics of the major/primary market you are targeting. This section might include information about the critical needs of your potential customers, the degree to which those needs are (or are not) currently being met, and the demographics of the group. It would also include the geographic location of your target market, the identification of the major decision-makers, and any seasonal or cyclical trends which may impact the industry or your business.
- ▲ Size of the primary target market. Here, you would need to know the number of potential customers in your primary market, the number of annual purchases they make in products or services similar to your own, the geographic area they reside in, and the forecasted market growth for this group.
- ▲ The extent to which you feel you will be able to gain market share and the reasons why. In this research, you would determine the market share percentage and number of customers you expect to obtain in a defined geographic area. You would also outline the logic you used to develop these estimates.

- ▲ Your pricing and gross margin targets. Here, you would define the levels of your pricing, your gross margin levels. For certain businesses, this could include any discount structures that are planned for the business, such as volume/bulk discounts or prompt payment discounts.
- ▲ Resources for finding information related to your target market. These resources might include directories, trade association publications, and government documents.
- ▲ Media you will use to reach your target audience. These might include publications, radio or television broadcasts, or any other type of credible source that may have influence with your target market.
- ▲ Purchasing cycle of your potential customers. You will need to identify the needs of your target market, do research to find the solutions to their needs, evaluate the solutions you come up with, and finally, identify who actually has the authority to choose the final solution.
- ▲ Trends and potential changes which may impact your primary target market, along with key characteristics of your secondary markets. Just like with your primary target market, you would again want to identify the needs, demographics, and the significant trends which will influence your secondary markets in the future.

### **Market Tests**

When you include information about any of the market tests you have completed for your business plan, be sure to focus only on the results of these tests. Any specific details should be included in the appendix. Market test results might include: the potential customers who were contacted, any information or demonstrations that were given to prospective customers, how important it is to satisfy the target market's needs, and the target market's desire to purchase your business' products or services at varying prices.

### **Lead Times**

Lead time is the amount of time between when a customer places an order and when the product or service is actually delivered. When you are researching this information, determine what your lead time will be for the initial order, reorders, and volume purchases.

### **Competitive Analysis**

When you are doing a competitive analysis, you need to identify your competition by product line or service as well as by market segment; assess their strengths and weaknesses, determine how important your target market is to your competitors, and identify any barriers which may hinder you as you are entering the market.

Be sure to identify all of your key competitors for each of your products or services. For each key competitor, determine what their market share is, then try to estimate how long it will take before new competitors will enter into the marketplace. In other words, what is your window of opportunity? Finally, identify any indirect or secondary competitors which may have an impact on your business' success.

The strengths of your competitors are also competitive advantages which you, too, can provide. The strengths of your competitors may take many forms, but the most common include:

- ▲ An ability to satisfy customer needs
- ▲ A large share of the market and the consumer awareness that comes with it
- ▲ A good track record and reputation
- ▲ Solid financial resources and the subsequent staying power they provide
- ▲ Key personnel

Weaknesses are simply the flip side of strengths. In other words, analyze the same areas as you did before to determine what your competitors' weaknesses are. Are they unable to satisfy their customers' needs? Do they have poor market penetration? Is their track record or reputation not up to par? Do they have limited financial resources? Can they not retain good people? All of these can be red flags for any business. If you find weak areas in your competition, be sure to find out why they are having problems. This way, you can avoid the same mistakes they have made.



If your target market is not important to your competition, then you will most likely have an open field to run in if your idea is a good one -- at least for a while. However, if the competition is keen for your target market, be prepared to overcome some barriers. Barriers to any market might include:

- ▲ A high investment cost
- ▲ The time it takes to set up your business
- ▲ Changing technology
- ▲ The lack of quality personnel
- ▲ Customer resistance (i.e., long-standing relationships, brand loyalty)
- ▲ Existing patents and trademarks that you cannot infringe upon

### **Regulatory Restrictions**

The final area that you should look at as you're researching this section is regulatory restrictions. This includes information related to current customer or governmental regulatory requirements as well as any changes that may be upcoming. Specific details that you need to find out include: the methods for meeting any of the requirements which will affect your business, the timing involved (i.e., How long do you have to comply? When do the requirements go into effect?), and the costs involved.

## **PART 3 – Company Description**

Without going into detail, this section should include a high level look at how all of the different elements of your business fit together. The company description section should include information about the nature of your business as well as list the primary factors that you believe will make your business a success.

When defining the nature of your business (or why you're in business), be sure to list the marketplace needs that you are trying to satisfy. This should include the ways in which you plan to satisfy these needs using your products or services. Finally, list the specific individuals and/or organizations that you have identified as having these needs.

Primary success factors might include a superior ability to satisfy your customers' needs, highly efficient methods of delivering your product or service, outstanding personnel, or a key location. Each of these would give your business a competitive advantage.

## **PART 4 – Organization & Management**

This section should include: your company's organizational structure, details about the ownership of your company, profiles of your management team, and the qualifications of your board of directors.

Who does what in your business? What is their background and why are you bringing them into the business as board members or employees? What are they responsible for? These may seem like unnecessary questions to answer in a one- or two-person organization, but the people reading your business plan want to know who's in charge, so tell them. Give a detailed description of each division or department and its function.

This section should include who's on the board (if you have an advisory board) and how you intend to keep them there. What kind of salary and benefits package do you have for your people? What incentives are you offering? How about promotions? Reassure your reader that the people you have on staff are more than just names on a letterhead.

### **Organizational Structure**

A simple but effective way to lay out the structure of your company is to create an organizational chart with a narrative description. This will prove that you're leaving nothing to chance, you've thought out exactly who is doing what, and there is someone in charge of every function of your company. Nothing will fall through the cracks, and nothing will be done three or four times over. To a potential investor or employee, that is very important.

### **Ownership Information**

This section should also include the legal structure of your business along with the subsequent ownership information it relates to. Have you incorporated your business? If so, is it a C or S corporation? Or perhaps you have formed a partnership with someone. If so, is it a general or limited partnership? Or maybe you are the sole proprietor.

Important ownership information that should be incorporated into your business plan includes:

- ▲ Names of owners
- ▲ Percentage ownership
- ▲ Extent of involvement with the company
- ▲ Forms of ownership (i.e., common stock, preferred stock, general partner, limited partner)
- ▲ Outstanding equity equivalents (i.e., options, warrants, convertible debt)
- ▲ Common stock (i.e., authorized or issued)

### **Management Profiles**

Experts agree that one of the strongest factors for success in any growth company is the ability and track record of its owner/management team, so let your reader know about the key people in your company and their backgrounds. Provide resumes that include the following information:

- ▲ Name
- ▲ Position (include brief position description along with primary duties)
- ▲ Primary responsibilities and authority
- ▲ Education
- ▲ Unique experience and skills
- ▲ Prior employment
- ▲ Special skills
- ▲ Past track record
- ▲ Industry recognition
- ▲ Community involvement
- ▲ Number of years with company
- ▲ Compensation basis and levels (make sure these are reasonable – not too high or too low)

Be sure you quantify achievements (e.g., “Managed a sales force of ten people,” “Managed a department of fifteen people,” “Increased revenue by 15% in the first six months,” “Expanded the retail outlets at the rate of two each year,” “Improved the customer service as rated by our customers from a 60% to a 90% rating”).

Also highlight how the people surrounding you complement your own skills. If you're just starting out, show how each person's unique experience will contribute to the success of your venture.

## Board of Directors' Qualifications

The major benefit of an unpaid advisory board is that it can provide expertise that your company cannot otherwise afford. A list of well-known, successful business owners/managers can go a long way toward enhancing your company's credibility and perception of management expertise.

If you have a board of directors, be sure to gather the following information when developing the outline for your business plan:

- ▲ Names
- ▲ Positions on the board
- ▲ Extent of involvement with company
- ▲ Background
- ▲ Historical and future contribution to the company's success

## PART 5 – Marketing & Sales Management

Marketing is the process of creating customers, and customers are the lifeblood of your business. In this section, the first thing you want to do is define your marketing strategy. There is no single way to approach a marketing strategy; your strategy should be part of an ongoing business-evaluation process and unique to your company. However, there are common steps you can follow which will help you think through the direction and tactics you would like to use to drive sales and sustain customer loyalty.

An overall marketing strategy should include four different strategies:

- ▲ A market penetration strategy.
- ▲ A growth strategy. This strategy for building your business might include: an internal strategy such as how to increase your human resources, an acquisition strategy such as buying another business, a franchise strategy for branching out, a horizontal strategy where you would provide the same type of products to different users, or a vertical strategy where you would continue providing the same products but would offer them at different levels of the distribution chain.
- ▲ Channels of distribution strategy. Choices for distribution channels could include original equipment manufacturers (OEMs), an internal sales force, distributors, or retailers.
- ▲ Communication strategy. How are you going to reach your customers? Usually, a combination of the following tactics works the best: promotions, advertising, public relations, personal selling, and printed materials such as brochures, catalogs, flyers, etc.

After you have developed a comprehensive marketing strategy, you can then define your sales strategy. This covers how you plan to actually sell your product. Your overall sales strategy should include two primary elements:

- ▲ A sales force strategy. If you are going to have a sales force, do you plan to use internal or independent representatives? How many salespeople will you recruit for your sales force? What type of recruitment strategies will you use? How will you train your sales force? What about compensation for your sales force?
- ▲ Your sales activities. When you are defining your sales strategy, it is important that you break it down into activities. For instance, you need to identify your prospects. Once you have made a list of your prospects, you need to prioritize the contacts, selecting the leads with the highest potential to buy first. Next, identify the number of sales calls you will make over a certain period of time. From there, you need to determine the average number of sales calls you will need to make per sale, the average dollar size per sale, and the average dollar size per vendor.

## PART 6 – Service or Product Line

What are you selling? In this section, describe your service or product, emphasizing the benefits to potential and current customers. For example, don't tell your readers which 89 foods you carry in your "Gourmet to Go" shop. Tell them why busy, two-career couples will prefer shopping in a service-oriented store that records clients' food preferences and caters even the smallest parties on short notice.

Focus on the areas where you have a distinct advantage. Identify the problem in your target market for which your service or product provides a solution. Give the reader hard evidence that people are, or will be, willing to pay for your solution. List your company's services and products and attach any marketing/promotional materials. Provide details regarding suppliers, availability of products/services, and service or product costs. Also include information addressing new services or products which will soon be added to the company's line.

Overall, this section should include:

- ▲ A detailed description of your product or service (from your customers' perspective). You should include information about the specific benefits of your product or service. You should also talk about your product/service's ability to meet consumer needs, any advantages your product has over that of the competition, and the present development stage your product is in (i.e., idea, prototype, etc.).
- ▲ Information related to your product's life cycle. Be sure to include information about where your product or service is in its life cycle, as well as any factors that may influence its cycle in the future.
- ▲ Any copyright, patent, and trade secret information that may be relevant. This should include information related to existing, pending, or anticipated copyright and patent filings along with any key characteristics of your products/services that you cannot obtain a copyright or patent for. This is where you should also incorporate key aspects of your products/services that may be classified as trade secrets. Last, but not least, be sure to add any information pertaining to existing legal agreements, such as nondisclosure or noncompete agreements.
- ▲ Research and development (R&D) activities you are involved in or are planning to be involved in. These would include any in-process or future activities related to the development of new products/services. This section would also include information about what you expect the results of future R&D activities to be. Be sure to analyze the R&D efforts of not only your own business, but also that of others in your industry.

## PART 7 – Funding Request

In this section, you will request the amount of funding you will need to start or expand your business. If necessary, you can include different funding scenarios, such as best- and worst-case scenarios, but remember that later, in the financial section, you must be able to back up these requests and scenarios with corresponding financial statements.

You will want to include the following in your funding request: your current funding requirement, your future funding requirements over the next five years, how you will use the funds you receive, and any long-range financial strategies that you are planning that would have any type of impact on your funding request. When you are outlining your current and future funding requirements, be sure to include the amount you want now and the amount you want in the future, the time period that each request will cover, the type of funding you would like to have (i.e., equity, debt), and the terms that you would like to have applied.

How you will use your funds is very important to a creditor. Is the funding request for capital expenditures? Working capital? Debt retirement? Acquisitions? Whatever it is, be sure to list it in this section.

Last of all, make sure that you include any strategic information related to your business that may have an impact on your financial situation in the future, such as: going public with your company, having a leveraged buyout, being acquired by another company, the method with which you will service your debt, or whether or not you plan to sell your business in the future. Each of these are extremely important to a future creditor, since they will directly impact your ability to repay your loan(s).

## PART 8 – Financials

The financials should be developed after you've analyzed the market and set clear objectives. That's when you can allocate resources efficiently. The following is a list of the critical financial statements to include in your business plan packet.

### **Historical Financial Data**

If you own an established business, you will be requested to supply historical data related to your company's performance. Most creditors request data for the last three to five years, depending on the length of time you have been in business.

The historical financial data you would want to include would be your company's income statements, balance sheets, and cash flow statements for each year you have been in business (usually for up to three to five years). Often creditors are also interested in any collateral that you may have that could be used to ensure your loan, regardless of the stage of your business.

### **Prospective Financial Data**

All businesses, whether startup or growing, will be required to supply prospective financial data. Most of the time, creditors will want to see what you expect your company to be able to do within the next five years. Each year's documents should include forecasted income statements, balance sheets, cash flow statements, and capital expenditure budgets. For the first year, you should supply monthly or quarterly projections. After that, you can stretch it to quarterly and/or yearly projections for years two through five.

Make sure that your projections match your funding requests; creditors will be on the lookout for inconsistencies. It's much better if you catch mistakes before they do. If you have made assumptions in your projections, be sure to summarize what you have assumed. This way, the reader will not be left guessing.

Finally, include a short analysis of your financial information. Include a ratio and trend analysis for all of your financial statements (both historical and prospective). Since pictures speak louder than words, you may want to add graphs of your trend analysis (especially if they are positive).

## PART 9 – Appendix

This section should be provided to readers on an as-needed basis. In other words, it should not be included with the main body of your business plan. Your plan is your communication tool; as such, it will be seen by a lot of people. Some of the information in the business section you will not want everyone to see, but specific individuals (such as creditors) may want access to this information in order to make lending decisions. Therefore, it is important to have the appendix within easy reach.

The appendix would include:

- ▲ Credit history (personal & business)
- ▲ Resumes of key managers
- ▲ Product pictures
- ▲ Letters of reference
- ▲ Details of market studies
- ▲ Relevant magazine articles or book references
- ▲ Licenses, permits or patents
- ▲ Legal documents
- ▲ Copies of leases
- ▲ Building permits
- ▲ Contracts
- ▲ List of business consultants, including attorney and accountant

Any copies of your business plan should be controlled; keep a distribution record. This will allow you to update and maintain your business plan on an as-needed basis. Remember, too, that you should include a private placement disclaimer with your business plan if you plan to use it to raise capital.

Source: [U.S. Small Business Administration](#)

### **Market Access Through IA&B**

IA&B's Market Options program offers access to several standard and niche markets including workers' compensation carriers. This is generally done through a broker agreement with IA&B. We also provide access for personal umbrella and home business insurance through RLI. Access to these programs is specifically for our member agencies. Additional market access to personal lines (Eagle Agency) and commercial lines (Big I Markets) products is available through the Independent Insurance Agents & Brokers of America for IA&B member agencies in Pennsylvania and Delaware.

In addition, IA&B membership allows members to access [Independent Market Solutions \(IMS\)](#). IMS facilitates relationships between independent insurance agencies and carriers without the need for a direct appointment. IA&B members can access IMS at no charge, and there are no minimum premium volume requirements. Sub-producers receive competitive commissions, participate in any earned contingencies, and work toward volume requirements that may eventually qualify them for a direct appointment.

Additional information about each program and an enrollment packet can be accessed [here](#).

### **Agency Agreement Resources**

You will be required to sign a contract with any carrier prior to representing them and their products. IA&B handles member requests on a broad range of legal and business issues. This includes reviewing agency contracts with carriers. In addition, considerable time is spent advocating on other issues that impact the efficiency and profitability of members' businesses. This includes proactive negotiation with carriers for changes in their agency-company contracts. Before you sign any carrier's contract, consult our [Agency & Company Relations](#) page to see if the contract has already been reviewed by us. If not, forward a copy to the association for a quick analysis.

# CHAPTER 5

## Errors & Omissions Coverage for a New Agency

Studies show that clear negligence on the part of an insurance agency is rare. Proving the agency is not negligent, however, is often extremely difficult without proper documentation. The focus of an agency employee should be to have a “paper trail” of all functions – large and small – performed within an agency. Most errors and omissions claims can either be prevented or be made defensible if proper procedures are implemented and followed consistently.

Based on the most recent data available, the top causes of loss by error type are:

1. Failure to give proper coverage.
2. Misrepresentation to the insured.
3. Failure to verify information.
4. Insufficient risk information.
5. Office procedures.
6. Delays/Procrastination.
7. Incorrect transmission of data.
8. Risk description.
9. Misrepresentation to the carrier.
10. Incomplete application.

To carry out the agency’s role effectively, the keys are thoroughness in:

- ▲ Gathering information.
- ▲ Relating information to available coverages.
- ▲ Making effective oral and written sales presentations.
- ▲ Following through with documentation.

Two important tools to keep on hand for documentation include a standard conversation form and personal and commercial lines account summaries. These items should be available both manually and incorporated into your agency’s automation system, if available. If used correctly and consistently, they help set the foundation for complete documentation throughout the life of a policy.

### IA&B’s E&O Options

IA&B offers errors and omissions coverage solutions through a choice of markets that have a long-standing reputation for stability. This market selection gives you flexibility to choose the one that best suits your agency to protect its assets from unforeseen E&O claims.

IA&B carefully selected highly rated carriers to offer diverse coverage features that are important to independent agents from both property & casualty and life & health operations:

- ▲ Comprehensive coverage
- ▲ Range of deductibles
- ▲ Liability limits options
- ▲ Multiple rating structures
- ▲ Competitive pricing

As a full-service independent agency specializing in E&O coverage for independent agents, IA&B has access to non-standard E&O markets and markets for start-up agencies. Start the process by downloading a [questionnaire](#) to tell us more about your agency.

IA&B also extends premium financing for your agency's E&O premium with competitive rates and terms can make a difference on your E&O coverage.



# CHAPTER 6

## Privacy Requirements for a New Agency

Agencies handle a lot of personal information in the process of insuring individuals and businesses. As a result, they must exercise caution and diligence in protecting personally identifiable information. For insurance producers – and agencies as a whole – privacy compliance has become an ever-expanding web of federal and state laws and regulations. You must have programs in place and regularly review your policies.

Laws affecting consumer privacy include:

- ▲ The Health Insurance Portability and Accountability Act (HIPAA) which created national standards protecting the privacy of personally identifiable health information.
- ▲ The Gramm-Leach-Bliley Act (GLBA) which deemed that insurance producers are “financial institutions” and subject to a number of requirements. The corresponding state regulations apply to insurance products used for personal, family, or household purposes (generally, this includes personal lines, but also WC and group benefits).
- ▲ The Fair Credit Reporting Act (FCRA) reauthorized as the Fair and Accurate Credit Transaction Act (FACTA) to help consumers fight identity theft. FACTA includes accuracy, privacy, limits on information sharing, and consumer rights to disclosure.
- ▲ State Insurance Data Security laws, which focus on cybersecurity and impose a requirement to notify the Insurance Commissioner when a breach occurs
- ▲ Other state laws, such as those that limit the use and disclosure of Social Security numbers.

Under several federal and state laws and regulations, agencies and producers must protect their customers’ and prospects’ nonpublic personal information and health information.

Specifically, under the GLBA and its corresponding state regulation, agencies must:

- ▲ develop and provide a notice describing the agency’s privacy practices to their customers and prospects, and
- ▲ develop a written information security program that describes the physical, technical, and administrative (i.e. procedural) safeguards in place in the agency.

IA&B has developed a privacy review that guides you through the compliance process. The laws and regulations can be complex, but this review can help you understand the requirements, your obligations, and the necessary steps to comply.

IA&B members: access the [Privacy white paper](#) on GLBA/Pennsylvania implementing regulation.

### Cybersecurity

Several states have enacted cybersecurity laws or regulations which create additional mandates for agencies and more overlap with existing requirements. If you hold a resident or non-resident license in any state that has enacted such laws, you must make sure you are compliant.

The [Delaware Insurance Data Security Act](#) (HB 174) imposes requirements on insurers and insurance licensees, including all agents and brokers, in the area of data security. It is based on the National Association of Insurance Commissioners (NAIC) model law, and specifically:

- ▲ Requires the implementation of a comprehensive written information security program, and
- ▲ Establishes standards for the investigation of and notification to the insurance commissioner of cybersecurity events affecting licensees.

## Important Notes

- ▲ Agencies with **fewer than 15 employees** are not required to develop, implement, and maintain a specific Information Security Program as described in §8604 of the Delaware Data Security Law (mentioned in item 1. above). However, those agencies should have one in place to comply with other federal and state requirements including the Gramm-Leach-Bliley Act and its corresponding state regulation.
- ▲ Agencies subject to HIPAA and that have developed an **Information Security Program compliant with HIPAA** are not required to develop, implement, and maintain a separate Information Security Program as described here in §8604 of the Delaware Data Security Law.
- ▲ Other sections of the law, including investigation and notification of a cybersecurity event, apply to *all agencies*, regardless of staff size, under §8605 and §8606.
- ▲ The Information Security Program was due for completion by July 31, 2020. However, compliance with the section on *oversight of third-party service provider arrangements* (§8604(f)) was due by July 31, 2021.
- ▲ A template Information Security Program is available for IA&B members to review, personalize, and use.

IA&B members: [Access the template](#)

# CHAPTER 7

## Fiduciary Duties and Properly Setting Up Bank Accounts for New Agencies

Fiduciary duties fall into two broad categories: the duty of loyalty and the duty of care. Pennsylvania, Maryland, and Delaware all have special requirements for producers who hold monies in a fiduciary capacity. In addition, certain federal requirements can affect the security of an agency's fiduciary accounts.

Understanding fiduciary duties is critical because it deals with the handling of premium funds. It is the number one violation in many states and is scrutinized by regulators.

Knowing what being a fiduciary means and what your state requirements are will help avoid inadvertent violations that could cost you heavy fines and penalties, and even your license.

We have created a resource for agencies to better understand their fiduciary duties under the law, the conditions to meet in order to commingle funds or to set up a proper premium deposit account, and how to protect those funds while under an agency's responsibility.

▲ [A Complete Guide to Fiduciary Duties in Delaware](#)

# CHAPTER 8

## Internal Procedures

Most people, in order to perform their job to the best of their ability, require some kind of structure. Without some written guidelines, your staff are forced to use their own best judgment in a variety of circumstances. While their judgment may be generally sound, problems will occur when a variety of procedures are developed and every employee operates under their own system instead of one general procedure created by management. Consistency in business practices and procedures is a critical component of E&O claims prevention.

Remember, that even if an agency has good policies and procedures in place, they are not helpful if agency personnel fail to adhere to them and put them in practice. This creates a real exposure to E&O claims. Consistent practices that follow established procedures can reduce the chances of errors and provide the service intended to the agency's customers.

IA&B offers a [template agency procedure manual](#) for purchase, which can be personalized as needed to your agency.

### Using Checklists

Having a coverage checklist for both personal and commercial lines serves two purposes. First, it provides a value-added service that ensures your client's insurance programs are well structured. Your knowledge of a prospect's operation is enhanced, which enables you to better identify and cover their exposures and to know more about the products you sell. This knowledge leads to better service to your customers, which in turn leads to increased sales. Have a coverage checklist available when preparing proposals and when explaining complicated insurance terms to prospective clients.

Second, from an E&O perspective, the agency can better document that it considered and discussed a wide range of coverages with the insured. When a client learns their claim won't be paid because there was no coverage, but that it could have been covered under a policy with different options, they may look back and assert that you never recommended other options to begin with. Having a coverage checklist that the client signs off on becomes a useful tool in eliminating potential E&O claims for failing to recommend coverage. During the risk analysis process and while learning about the client's operation, review the comprehensive list of exposures with the help of a quality checklist.

As you identify exposures for potential clients, help them understand existing exposures and allow for clarification of coverage needs. The client will be impressed with your level of professionalism and comfortable with your insurance knowledge. If you have identified an area of coverage for which your agency does not have a market to provide coverage, it is important that you address it with the client.

Through IA&B, you have access to a discount for a product called Rough Notes Advantage-Plus. In Pennsylvania and Delaware, you can access it through the [Big I](#). In Maryland, you can access it through [PIA](#). It includes coverage checklists that:

- ▲ help you understand the exposure of businesses in more than 650 different industries, including recommended minimum coverages
- ▲ create and print comprehensive questionnaires to collect the information necessary to complete ACORD applications
- ▲ help you learn from a comprehensive list of coverages with succinct definitions to enhance understanding at the point of sale

- ▲ help document the customer file in the form of a comprehensive checklist of coverages offered, accepted, rejected, or not applicable, which is signed by the customer and stored in the file

## Record Retention

Record retention guidelines are sometimes difficult to pin down. You need to take into account different factors in order to determine the best record retention policy for your agency. This will be based upon the existence of state statutory and/or regulatory requirements, the agent's common law duty (based on the type of record), and your agency agreements.

## Factors Influencing Your Record Retention Policy & Sample Record Retention Schedule

### The State(s) Where You Do Business

**Laws & Regulations** - Delaware has addressed agency records in the Producer Licensing and the Surplus Lines statutes (Title 18 §§ 1707 and 1923, respectively).

The statute now provides five years as the general time limit for record retention (independently from other requirements that may be imposed by the Internal Revenue Service or other regulatory agencies). Carriers may determine that longer retention periods are necessary or advisable.

**Statute of Limitations/Statute of Repose** - - Another important statutory consideration is the effect of statutes of limitation and statutes of repose. They both set the time for an injured party to initiate a legal action in court. For our primary purpose, we will address Delaware law.

- The statute of repose starts tolling when a specific event occurred (e.g. construction of a building), and its application is not contingent on the occurrence of injury or damage. As a result, a statute of repose is generally more restrictive for the plaintiff. In Delaware, the statute of repose applies to Real Property, and provides six years from substantial completion.

- The statute of limitation, while closely related, is not identical. It sets forth the maximum time after an event that legal proceedings based on that event may be initiated. In other words, it will follow the occurrence of damage or injury. In Delaware, the statute of limitation applies as follows:

- ▲ Personal injury: 2 years
- ▲ Wrongful death: 2 years
- ▲ Products liability: 2 years
- ▲ Medical malpractice: 3 years from injury or 2 years from discovery (with some exceptions for minors under 6 and sexual abuse of child-patients)
- ▲ Workers' compensation: 2 years
- ▲ Discovery rule: applies

But statutes of limitation are not necessarily black and white when interpreted. For example, laws, and the courts, generally review the statute of limitation as tolling when the event giving rise to the claim was first discovered or should have been known (Discovery Rule).

For more difficult tort actions, such as for occupational disease, products liability, or environmental pollution, manifestation and/or discovery may take years, even decades. Agents are very familiar with asbestosis litigation and the reach back to occurrence policies written decades ago.

There are statutory requirements imposed by the IRS on your financial records. Maintaining proper records is essential not only for good management purposes, but also when audited.

**Your Agency Agreement** - The final consideration, which must be addressed individually, is any duty imposed upon you by your carriers. Agency agreements often spell out specific requirements for record retention that must be incorporated when establishing your policies and procedures. With the increase of upload of applications, many agency agreements now require the agent to keep all original applications, some for as long as the agency agreement is in effect, as an example.

IA&B has developed a white paper to help members review state-specific requirements and guidelines. The white paper includes:

- ▲ a sample chart/record retention schedule to help you define your own record retention policy for customer records,
- ▲ a sample schedule for the agency's own financial records, and
- ▲ information regarding electronic record retention and conditions surrounding paperless records.

[Access the Delaware white paper](#)

# CHAPTER 9

## Considerations As Your New Agency Grows

### **Technology, Productivity Enhancement, Best Practices**

Effective use of technology will be critical to the future success of your agency. It is extremely important for you to stay current with the latest releases to your agency management system. Your operating system, software, and hardware should be up to date to ensure efficient operation of current applications. Avail your agency to new company interfaces promptly and use electronic download from the company wherever possible to eliminate paper and improve efficiency. These steps taken together will position the agency to use many emerging real-time technology applications profitably.

To make your brand stand out and look authentic, all official communication should come from custom email addresses that contain your business' domain – for instance, user@yourdomain.com. You should create a domain for your business and then set up custom email addresses in your domain. Every employee should have high-speed Internet access and their own email account. You should avoid employees using email domains such as @yahoo.com, @gmail.com, @hotmail.com, etc.

Once operational, you need to focus on the security of your systems because the new functionality creates new risks that must be managed. The independent agent's business model is compelling to insurance consumers because of the agency's expertise, independence, and multiple company representation. For this business model to excel in the future, however, you must couple these strengths with budgeted, ongoing investments in effective technology.

### **Proper Use of Technology and Customer/Company Appeal**

Customers are impressed with agencies that use the latest technologies. Not only is the agency's image enhanced, but it is also positioned to meet the consumer's increased expectations. Consumers expect their needs to be handled in real time. The agency's technological savvy is increasingly a deciding factor for consumers in choosing an agent.

Technology allows an agency to broaden its geographic reach, as a means of growing its business and serving the customer. It also permits agencies to streamline workflows, get work done more quickly, get answers from companies more quickly, and free up agency employees to engage in productive work. Less human intervention because of automated processes means fewer errors and less unproductive rework to correct errors.

Most companies are moving in the direction of streamlining their own processes. They are spending millions of dollars reworking their processes to take advantage of current technologies. In this, they find agents that are able to transact business with them on a similar platform are much more appealing and are turning away from the days where they tried to be all things to all agents. It is difficult to keep up with standards and technology and stay competitive when they have to do business with old legacy systems and thought processes.

Viewed in its simplest terms, consumers, companies, and other business entities with which agents deal have increasing expectations regarding the technological capabilities of their trading partners. Agents, who provide the essential link between these parties, must respond to this new reality to continue to succeed in the future. The same reality holds true for carriers and the agents' other trading partners.

### **Agency Management Systems**

Agency management systems are by far the core of the agency workflow. It is a big capital decision choosing the management system. Most of the systems are very similar in nature and provide the core competencies of an agency such as policy management, certificates, and ACORD Forms. In addition, most systems today are cloud-based. There should be a few questions you ask yourself when deciding on a system, but when it is all said and done, it is a business decision based on how much technology you can afford.

## Due Diligence in Selecting an Agency Management system

When choosing a system, ask yourself some key questions:

- ▲ What is the reputation of the vendor? Are they well known in the industry?
- ▲ What is the service record of the vendor? You want to be able to get assistance when you need it.
- ▲ Can they provide you a list of customers that you can contact?
- ▲ Does the system have a user group? User groups are important for education and interfacing with the company on system upgrades, changes, and issues related to the industry.
- ▲ Is the company financially sound? You don't want to make the investment into a company that will not be around next year. Plus, there will be added costs of conversions that could be quite expensive.
- ▲ Is the vendor involved with standards and ACORD-approved? Vendors that take the insurance industry seriously will be involved with ACORD, IVANS, ACT, AUGIE, and other organizations that help in streamlining the industry.

The above questions are just a few to consider. You may wish to formulate a few of your own based on your needs and concerns, but make sure you do the proper due diligence in choosing a vendor, and plan accordingly on the installation and implementation.

### Agency Management Vendors

The Agents Council on Technology (ACT) maintains a website for agents to review the current agency management system vendors and their capabilities. You can access that site [here](#).

### Agency Website

To be viable in today's environment, you must consider a website and revisit its functionality regularly. The life cycle of a website has shortened, and new features may need to be incorporated depending on what the agency's core market is. IA&B has partnered with a leader in insurance agency websites, [Agency Revolution](#), to provide a customized solution that combines consumer-oriented and secure features with attractiveness and functionality. The website is entirely (and affordably) subscription-based and has no setup fees.

## Human Resource Needs

Running a successful independent insurance agency requires strong skills in recruiting, training, and managing employees. Good management practices help with agency stability and perpetuation and can keep an agency in compliance with state and federal laws.

IA&B has a variety of [HR tools](#) and great resources to help you manage your agency effectively. This includes the following:

**Job Boards & Hiring Resources** - Post a job opening and look through resumes of insurance professionals seeking a job.

**WAHVE** (Work At Home Vintage Experts) - A unique, cost-saving, remote-contract staffing solution for the insurance industry (experienced insurance professionals working remotely based on a contract customized to your short- or long-term needs). IA&B members receive a discount on the one-time setup fee.



**Employee Handbook** - IA&B members can customize our sample employee handbook for their agency. This popular member tool helps you to define the policies and procedures your agency follows and to promote understanding of your agency's culture and expectations. The handbook includes sections on:

- ▲ Employment Policies
- ▲ Timekeeping and Payroll Policies
- ▲ Work Policies
- ▲ Safety, Health and Security Policies
- ▲ Benefits
- ▲ Associate Non-Disclosure of Confidential Information
- ▲ Associate Handbook Acknowledgement

**Overtime Rule - Fair Labor Standards Act (FLSA)** - Agencies must comply with existing FLSA requirements, particularly the primary duties test, an element of the existing rule that is often misunderstood or overlooked, leading to significant non-compliance. IA&B offers explanatory resources.

**Producer Agreement Toolkit** - It is imperative for agency owners to understand their rights under common and contract law to better protect the agency's core asset, its policy expirations. Whether employees or independent contractors, an agreement should be in place with your producers. IA&B's Producer Agreement Toolkit explains an agency owner's rights and helps you to protect your agency. The toolkit outlines the necessary provisions that should be present in producer agreements and includes a sample contract for employees and another for independent contractors.

**Production Schedule Worksheet** - Learn how to calculate production volume requirements for new producers. IA&B provides members with an Excel table to help calculate different options based on the agency's characteristics. Simply input your agency's average commission rate, average retention rate, desired commission split, and how many policies you expect your producer to write each month for the first three years.

**Employee Assessment** - Make smart and economical personnel decisions with profiling services. As an IA&B member, you receive discounts from several vendors.

**Background Checks** - Institute a formal policy within your agency to make sure all employees have proper authorization. This could include a systematic criminal background check of current employees and new hires. The Violent Crimes Control and Law Enforcement Act of 1994 specifies that individuals convicted of a felony involving dishonesty or breach of trust may not work in the insurance industry without first obtaining written permission from the state Insurance Department. In addition, insurance agencies and companies may not knowingly allow such individuals to work in the industry.

**HR Professional Services** - IA&B members receive professional human resources guidance from Herbein | Mosteller HR Consulting, a comprehensive HR firm with a focus on independent agencies. As an IA&B member, you receive complimentary consultation from Herbein | Mosteller associate Karen DiGioia, as well as a 15% discount on tailored, in-depth products and services.

**Telecommuting Policy & Remote Work Agreement** - If your agency plans to operate with telecommuting, a remote work policy, checklist, and agreement ensure consistency and continuity in your operations. If you need assistance, IA&B offers a remote work tool – a collection of Word documents, which you can customize to meet your agency's needs. It includes an agreement, guidelines, and checklist.