

**CHAPTER 127. MANAGEMENT CONTRACTS OR EXCLUSIVE
GENERAL AGENCY AGREEMENTS**

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Authority

The provisions of this Chapter 127 issued under The Insurance Department Act of 1921 (40 P. S. §§ 1—321), unless otherwise noted.

Source

The provisions of this Chapter 127 adopted January 15, 1971, effective January 16, 1971, 1 Pa.B. 823, unless otherwise noted.

§ 127.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Company—A domestic insurance company.

Contract—A management contract or an exclusive general agency agreement entered into between a licensee and a company.

Department—The Insurance Department of the Commonwealth.

Licensee—An individual, corporation or copartnership licensed or subject to licensing by the Insurance Commissioner as a manager or exclusive general agent of a domestic insurance company under section 651 of The Insurance Department Act of 1921 (40 P. S. § 291) and this chapter.

§ 127.2. Purpose.

This chapter is to facilitate the licensing of managers or exclusive general agents of domestic insurance companies by outlining certain conditions and provisions which should be contained in management contracts and exclusive general agency agreements, and setting forth the principles under which the contracts and agreements will be reviewed by the Department.

§ 127.3. Application and supporting documents.

Each application for a manager's or exclusive general agent's license, or for renewal of a license, shall be accompanied by an executed copy of the contract and a certified copy of a resolution of the board of directors of the company

approving the contract, for review by the Insurance Commissioner prior to the issuance of a license or renewal thereof.

§ 127.4. General contract requirements.

(a) Contracts shall be fair and equitable and shall be the result of an arm's length negotiation between the licensee and the company.

(b) The effect of a contract may not be to delegate virtually complete supervision and control over functions of the company to the licensee, thereby effectively substituting the licensee for the board of directors of the company.

(c) Contract provisions shall be consistent with the articles of incorporation and bylaws of the company.

(d) The rights, obligations and duties of the parties to the contract shall be specifically and clearly set forth.

(e) Contracts shall avoid conflict of interests between the company, the licensee and officers or directors of the company.

(f) Contracts shall also contain the following:

(1) Clear and precise termination provisions, specifying a termination date not later than 5 years after the date of execution, and may not provide for automatic renewal.

(2) A provision stating that duties not specifically delegated to the licensee are retained by the company.

§ 127.5. Compensation of licensees.

(a) The total compensation of a licensee under a contract, including deferred compensation, shall bear a reasonable relationship to the actual services which he renders to the company.

(b) A net override commission or fee may not exceed 10% of the gross premiums written by the company.

(c) Compensation provisions shall, through a reasonable service fee formula or by other appropriate means, avoid an arrangement which may encourage the under-reserving of claims, improper underwriting practices or other results detrimental to the best interests of the policyholders of the company, claimants or of the general public.

(d) Forms of compensation or income intended to be received by or accrued to the benefit of the licensee, directly or indirectly from the company, shall be set forth in the contract. The sources of income shall include, but are not necessarily limited to, the following:

(1) Salaries or fees paid to the licensee or to officers or directors of the licensee.

(2) Insurance agents' commissions.

(3) Rental payments for real or personal property leased from the licensee by the company or profits realized on sales by the licensee to the company.

(4) Value of services or facilities furnished by the company to the licensee.

(e) Compensation of a nature paid to relatives of the licensee or to relatives of the officers or directors of the licensee; to a business entity controlled by licensee, relatives of the licensee or relatives of the officers or directors of the licensee; or to close business associates of licensee, shall be disclosed to the Insurance Commissioner.

§ 127.6. Amendments to contracts.

An amendment to an existing contract shall be filed promptly with the Insurance Commissioner.

§ 127.7. Penalties.

Failure to comply with this chapter shall subject a licensee, following notice and hearing in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to revocation of license; in addition thereto, a failure to comply with this chapter shall constitute a violation of the laws of the Commonwealth and shall subject a company or licensee so failing to comply to the penalties provided by law.

§ 127.8. Severability.

If a provision or clause of this chapter or the application thereof to a person or situation is held invalid, the invalidity may not affect another provision or application of this chapter which may be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

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