

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
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Circular Letter No. E-12-361-64

December 4, 1964

TO ALL THE INSURERS AND THEIR
GENERAL AGENTS OR MANAGERS

Gentlemen:

Section 9.030 of the Puerto Rico Insurance Code defines a Solicitor as an individual appointed and authorized by an agent or broker to solicit applications for insurance as a representative of such agent or broker.

From this definition it is clear that an insurer (insurance company) may not appoint solicitors to represent it. They may not either be appointed by a General Agent or Manager, unless the latter are holders also of a separate agent's license. In this case, the relation of the Solicitor with his principal shall be in his principal's capacity as agent and not as General Agent or Manager.

As an insurer cannot appoint solicitors, it cannot either accept any business directly from them or pay them commissions on such business.

According to the above quoted definition, the Solicitor procures insurance business in the name of the broker or agent who appointed him and not in the name of the insurer or insurers represented by said agent. It is the agent who presents the business so procured to the insurer and it is to the agent to whom the insurer pays the commissions for such business.

The solicitor in turn receives his compensation from the commissions that the agent or broker gets from the insurer. It is for this reason that the commission of a solicitor must be smaller than that of the agent or broker. It could be otherwise understood that the solicitor is acting as an agent and that the only reason for his appointment as such was that he did not meet with the qualifications required for agents, specially if the appointing agent is an officer of the insurer or a General Agent or Manager.

From all of the foregoing one might ask if a solicitor may sign the application for insurance. As primary or direct producer, he may sign the application, but it in turn must also be signed by the agent before it is submitted to the insurance company. This is necessary because, as far as the company is concerned, the producer is the agent or broker and it is to them to whom the commission would be credited.

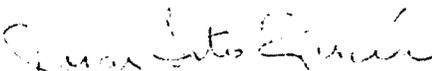
Another reason to require the signature of the agent in the application is that, pursuant to Section 9.240(2) of our Insurance Code, "a solicitor shall not have power to bind an insurer upon and with reference to any risk or insurance contract". Therefore for the insurer to be "bound" the insurance contract must be issued through the agent, as provided in Section 3.290(1) of the Code.

Notwithstanding the clarity of language and intent of paragraph (2) of Section 9.240, the Insurance Code, as if it were very seriously concerned in establishing the dependence of the solicitor on his agent or broker, insists once more in paragraph (3) of said Section that "all business transacted by a solicitor under his licence shall be in the name and for the account of the agent or broker by whom he is appointed, and the agent and broker shall be liable for all acts or omissions of the solicitor within the scope of such appointment".

As to the solicitor's license, Section 9.230 of the Code grants its possession to the appointing agent or broker and makes them responsible for returning it to the Commissioner of Insurance for its cancellation upon termination of such appointment.

The insurers and their General Agents or Managers must keep these provisions in mind in order not to accept any business directly from a solicitor nor to pay him commissions directly on such business. Also, the agents and brokers must weight the great responsibility they assume with the appointment of solicitors to procure business in their name.

Cordially yours,


Jorge Soto Garcia
Commissioner of Insurance

P. S. This is a translation of an article published in Spanish in our Boletín de Seguros for the month of October 1964.