

How to Buy, Sell & **EVALUATE**



**a "Mom & Pop"
Insurance Agency**

Ino Betternow

Table of Contents

(IF YOU ARE READING THIS IN ADOBE PDF, CLICK ON ANY TOPIC TO BE TAKEN TO THAT PAGE)

FOREWORD.....	3	ACQUISITION TIPS ‘N TOOLS FROM AN AGENCY BUYER	42
HOW TO EVALUATE, BUY & SELL A “MOM & POP” INSURANCE AGENCY.....	3	TOP 10 KEY FACTORS OF “FAIR MARKET VALUE” ...	42
SEARCH FOR TOMORROW.....	3	SWEETHEART DEALS ... ARE YOU THE NEXT SWEETHEART?	43
WHY HAVE AGENCY VALUES DECLINED?	4	WHAT IT COSTS.....	43
SO LONG, MOM & POP?.....	5	ROLL, ROLL, ROLL YOUR BOOK.....	45
THE LAZY BONES AGENCY VALUE FORMULA.....	8	FILE STORAGE & RETRIEVAL	46
GOODWILL HUNTING	8	THE URGE TO MERGE.....	47
AGENCY SELF-EVALUATION CHECKLIST.....	10	WHY MY MERGER FAILED	48
HOW TO SELL YOUR “MOM & POP” INSURANCE AGENCY.....	15	FRANCHISE EXAMPLE: ZARAGOZA ASEGURANZAS	53
10 NOT-SO-EASY STEPS.....	15	AFTER THE SALE:.....	46
BUYING OR SELLING AN AGENCY? TIME TO CHECK YOUR E&O COVERAGE.....	17	PRE-ACQUISITION CHECKLIST	47
PRIOR ACTS—OR “TAIL”—COVERAGE: MAKE IT PART OF YOUR BUY/SELL AGREEMENT	19	NEED CAPITAL TO GROW?.....	48
WHEN BUYING OR SELLING AGENCIES, IS POLICY ASSIGNMENT AS GOOD AS IT LOOKS?	20	UNCLE SAM CAN HELP WITH THE PURCHASE	49
LEARN THE SECRETS OF EFFECTIVE RISK MANAGEMENT BEFORE BUYING OR SELLING AGENCIES	21	THEFT OF ACCOUNTS: WHAT TO DO WHEN A PRODUCER DEPARTS - WITH YOUR ACCOUNTS.....	50
WHAT IF YOU'RE AN EXISTING AGENCY OWNER AND YOU ARE BUYING ANOTHER AGENCY?.....	22	NONCOMPETE-SPEAK DEFINITIONS	51
TOP TEN SUGGESTIONS TO IMPROVE THE BOTTOM LINE.....	23	BREAKING UP IS HARD TO DO!.....	52
WHY DOES AN OWNER WANT TO SELL THE AGENCY?	24	AGENCY / COMPANY CONTRACTS.....	53
10 REASONS YOU SHOULD NOT SELL YOUR OWN AGENCY.....	26	WHY TERMINATE AN AGENCY – COMPANY CONTRACT?.....	68
HOW TO BUY A “MOM & POP” INSURANCE AGENCY	27	TRUE CONFESSIONS: REAL LIFE BUYING & SELLING STORIES	72
WHY DOES A BUYER WANT TO BUY?.....	27	ALL I WANT FOR CHRISTMAS ... IS TO STEAL YOUR BOOK OF BUSINESS!	72
QUESTIONS TO ASK YOURSELF BEFORE YOU START LOOKING	28	WHAT YOU CAN DO TO PROTECT YOUR BOOK OF BUSINESS.....	74
TOP 8 QUESTIONS ABOUT THE ACQUISITION TARGET	28	BREAKING UP IS HARD TO DO!.....	75
WHERE DO YOU FIND ACQUISITION TARGETS?.....	29	WHAT ABOUT THESE CONTRACT TERMINATIONS?..	76
KEY ELEMENTS OF A PURCHASE AGREEMENT	31	DEATH OF AN AGENCY: FOR WHOM DOES THE BELL TOLL?	78
SHOULD YOU USE A BUSINESS BROKER OR AGENCY BROKER?	34	WILL THE REAL OWNER PLEASE STAND UP?	79
HOW TO COLLECT THE PURCHASE PRICE	36	SAMPLE ACQUISITION PROSPECTING LETTER.....	81
PROTECTING YOUR INVESTMENT WHEN BUYING AN AGENCY.....	38	SAMPLE CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT	82
		AGENCY SOLD FOR \$10.00 PURCHASE AGREEMENT	83
		SAMPLE CONTRACT OF EMPLOYMENT	87

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Foreword

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Many agency owners contemplate selling their agency or merging / buying another agency as a way to overcome the Increased cost of doing business coupled with decreasing commission.

I've spent countless hours over the last couple of months gathering together the evaluating, buying & selling experiences and opinions of our industry's “Movers & Shakers” from sea to shining sea. Their experiences are detailed in this “How To” booklet I have offered to benefit members of the Insurance Industry.

Agency Valuation is an art and not a science. Understanding the “truths from the myths” in valuations and deal structures is half the battle. Learn the different types of acquisitions and the “hot buttons” that drive the sale.

Inside this booklet we will explore in detail the evaluation process, deal structures and other pertinent transaction issues that are critical if you are considering selling or buying.

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p.s. Please respect the time & effort I put into this booklet and do not copy nor share it with anyone not in your employment.

Thanks and good luck!

Eddie

By the way ... I created this booklet over 15 years ago and am amazed at how relevant the contents remain to this day.

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Search for Tomorrow

Are your revenues flat? Have the 1-800 & Internet Carriers continued to nibble away at your potential client base? Do you think growth (& profits) will come from acquisitions of your competitors' books of business?

On the other hand, are you ready to sell your agency and reap the rewards from all of your blood, sweat & tears?

In either case, you need a well thought-out plan. The acquisition plan of many would-be sellers / buyers reminds me of the dairy farmer who takes his milk pail and milking stool out to the middle of the pasture and waits for the cow to back up to his position.

Your well thought-out plan should include the following:

- (1) Clearly define the areas in which you wish to add to your present business model;
- (2) Design a ‘Win – Win’ proposal for seller & buyer;
- (3) Line up your advisors, attorney, banker and CPA who understand your future plans, and;
- (4) devise a “Search & Find” strategy.

There are only two reasons for buying an agency:

- (1) Passive Income, or
- (2) Saleability.

If you buy an agency for any other reason, you are basically creating a job for yourself.

You must always have some type of "exit strategy" in mind when you open an agency.

If you don't currently have an "exit strategy" for your business...

Start Planning One!

Your goal should be to either sell your agency or have it running independent of you in the next 5 years or less.

By forcing yourself to think this way, you will begin to attract opportunities, which will allow you to "extract" yourself from the business.

Successful agency asset acquisitions do not just happen. In this booklet you'll learn all the steps and the dos & don'ts of successfully selling your agency or buying another agency.

You'll find detailed discussion of the steps in the process; learn how to find the buyers & sellers; their strategies and approach to acquisitions; how to effectively conduct the due diligence process; understanding the implications of legal agreements; including employment agreements; closing issues and what to look for; and what to expect during life after the sale.

The chapters “How to Sell Your “Mom & Pop” Insurance Agency” and “How to Buy a “Mom & Pop” Insurance Agency” provide a great outline to get you started out on the right path.

Personal Auto Time Line: 1945 - Present

First, the bad news.

The value of insurance agencies has declined from 25% to 50% for the average agency.

Please notice that this statement refers to the "average" agency. "Average", in this statement does not refer to average size. It refers, instead, to the mind-set of the owners, the way it uses its automation capabilities, the way it administers its operation, the way it sells insurance and other factors that separate the dynamic insurance agency from the passive agency.

Why have agency values declined?

The reasons for the decline are complex. They include (but are not limited to) the following:

- Reduction in commission rates by companies
- On-going soft market reducing premiums (compounding the problem created by the commission changes)
 - Declining contingency income due to reduced contingent contracts combined with higher loss ratios (premiums have decreased, claims have not)
 - Reduced interest income resulting from ever-increasing direct billing combined with lower investment return and the general market conditions
 - Continued encroachment into personal and commercial lines by direct writers. The more competitors the less market share we get to keep - and they are advertising more aggressively and eating our lunch in the sales department!
 - Generally poor sales ability by independent insurance agencies. Many agencies have trained their staff (and clients) that price is the only factor. Trained, professional sales staff in the exceptional agencies belie this issue by their continued success - Just read about them in any of the trade journals.
 - Lack of Strategic Planning and succession planning. Flying by the seat of our pants doesn't enhance value. Not knowing who will operate your agency should something happen to you increases risk factors.

So Long, Mom & Pop?

"Just as milk home delivery is a thing of the past ... so too will the local independent agent selling auto and homeowners insurance decline significantly because he cannot compete financially with direct-writers or other low-cost insurance distribution methods," said the Hartford, Conn.-based Conning & Co. report.

The report said that "eventually, we expect personal lines will no longer be sold through the independent agency system, but rather through exclusive agents, banks, ATMs, television, the mail, home computers, or telephone". (Source: National Underwriter, June 26, 1995)

INTERNET ... Information Superhighway ... The "World Wide Web" is for more than just computer geeks / gurus and gives access to information of every type imaginable.

Mark Linden, CIC, painted a grim picture of the near future in his commentary entitled "Insurance 2001 virtual reality or ...?"

Imagine ... from the comfort of your living room chair, you click on your television set. A friendly face greets you and asks, "How can I serve you?" "I need car insurance," you reply. "Please wait." A few moments later an application for auto insurance appears on the screen. A voice instructs you to state your name, address and so on, prompting you step-by-step through the application. Within minutes the process is complete and a list of options and premiums appears. You ask the TV any questions you have and it provides the answers. After making your selections and indicating the desired payment method, a laser printer hums as the policy is electronically delivered. "Thank you for your business," says the friendly animated face. "How can I serve you?" Many of you may scoff at this scenario. "My clients can't even maintain a checking account. They sure can't navigate through a complex insurance application. Mark asks, "Do they have a television set?"

This futuristic vision may be a little advanced for most of us. How about setting up a toll-free # and urge your customers to call to cut out the agent's commission? Someone's already thought of that idea. Ever heard of GEICO or Progressive Direct? For those companies that do not have billions to invest in the building an Internet presence, some companies quote over the phone and the process is completed by sending prospective customers to a local Mail Boxes, Etc. to sign the faxed application.

The December 4, 1995 issue of Weekly Marketeer had a lot to say about Progressive Insurance Company's marketing strategy. To lend perspective to Progressive's marketing philosophy, here's what editor David Schiff had to say in the November 22, 1994 issue of Emerson Reid's Insurance Observer:

"The Progressive Group ... expects to become an important player in the standard Auto insurance market as well. The company's consumer research indicates that buyers want low prices, brand-name insurance companies, and customer service. 'Progressive is going to be the lowest-priced, highest-quality Auto insurer,' declared CEO Peter Lewis to a group of securities analysts. V.J. Dowling of Hartford-based Paulsen, Dowling, reported that Lewis told the audience, 'Agents add very little value in Personal Auto' and must get used to operating on a 5% commission level. 'If they can't do business for 5%, they don't belong in the system.' Agents should listen carefully to Pete. It has been his strategy that has brought Progressive such phenomenal growth.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Mr. Lewis is more prophetic than you can imagine. Scott Levenstein of ATI Auto Town Insurance tells me of an acquaintance recently worried about losing his agency. The agent wrote a lot of business at reduced commission & is starving to death.

Scott advised the agent, 'You must do one of two things. Start writing your business at a profitable commission level or close your office, move the files to your basement and continue to renew the book for as long as you can!' The Conning study bears out this unfortunate scene. They found that 40% of the small, 34% of the midsize and 7% of the large agencies surveyed are willing to sell their book of personal lines business. Another Conning report finds the number of agencies has fallen 50% from its golden years of the 1950s, agency commissions are down sharply, agents are getting older (average age is 56) and the flow of young people into the insurance business is "alarmingly low".

In 1951, at the tender age of 21, Warren Buffett, arguably America's shrewdest investor wrote about GEICO. GEICO, which specializes in preferred-risk policies and markets directly to drivers, "has no agents... [Its] biggest attraction is the profit margin advantage it enjoys." He bought the entire company and has great plans for the future. You're probably not a part of the plans.

Companies know us better than we know ourselves. Rates are being filed with apparently little regard for agency income. They know agents will write policies at a loss rather than risk "losing the loss" to a competitor. They know lower rates using multiple discounts and lower than 15 commissions will get the business. Direct-to-consumer service cutting out the agent will widen the loyalty gap between agent & customer. IF THE DISCOUNTS FIT ... YOU MUST SUBMIT! Can anyone tell me why 15% commission is too much to ask? Thankfully, we still have companies who realize our worth and continue to offer "The Full Commission Company" respect to the Independent Agency force.

Integon executive Steven Andrews' address to the Association of Insurance & Financial Accountants was reviewed recently in BestWeek magazine. It stated that Integon sees the best positioned companies as those that will rely more heavily on telephone sales to reduce the cost of doing business. Market forces favor direct marketing channels over normal agency functionaries. Even so, "selling" the policy still will endure as an agency role.

INDEPENDENT AGENT DEAD?

Stephen W. Doucette, president of Guardian Northwest, has declared the "traditional" independent agent is already dead, but local entrepreneurs are not. He feels a true entrepreneur will provide the low cost & superior service demanded by today's customer. He will use the ever-expanding technology to his advantage. Downloading direct to the company will cut out the home office not the local agent.

Don't worry about deciding whether to automate or not. You don't have a choice in the matter. Realize there is not "ONE" answer but an ever-evolving "ONE". Today's Answer?

Same one I've been preaching for the last five years. Our companies pay close attention to us, whether it is our words or our actions. You tell them how much you think you're worth with every policy you sell. Just say NO to reduced commissions! Or ... So Long, Mom & Pop!

Why Should You Evaluate a “Mom & Pop” Insurance Agency?

Evaluations are usually done for one of three reasons: (1) to determine a fair market value for selling or buying; (2) to calculate ownership value among partners; or (3) planning for retirement or changing careers.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Insurance policies are considered intangibles. What we sell to our clients is a promise. Those promises add up to become a book of business. What’s a book of business worth?

Agencies are like snowflakes ... no two are exactly alike. That’s why a “rule of thumb” doesn’t work. Every agency has different dynamics and should be valued in a way that takes those different characteristics into consideration.

That intangible determines the vast majority of the value of an agency. It reminds me of the theory that a body in motion tends to stay in motion unless acted upon by an outside influence. Likewise, an agency that has been growing will continue to grow (or continue to lose marketshare) unless the new buyer changes the agency dynamics.

Fair Market Value ... that price at which a willing seller will sell and a willing purchaser will buy, neither under abnormal pressure to act.

Multiple of Commissions Does Not Work

Until recently, there was virtually only a couple of ways an agency was sold. When an agency principal wanted or needed to sell, he was forced to contact a "friendly" competitor due to the complexity of the industry. The "friend" would "buy" the agency for a percentage of the renewal premiums.

There are many problems with this type of arrangement. I will only mention a few. The first thing the "friend" does is start "rolling" the business to his existing contracts so that the renewals drop steadily. He then tells his "friend", the seller, "Attrition is really a killer." The low price he agreed to pay is deceptively reduced and the seller would incur substantial cost to monitor the process.

Another popular method is a multiple of the past 12 month’s income, i.e. one times, 1.50%, etc. Depending upon past income is like driving backwards down the road using your rear view mirror to see where you are going!

AI Diamond of Agency Consulting Group (www.agencyconsulting.com) uses this example: Let’s say Agency A and Agency B are next to each other in a medium sized city. Each generates \$1 Million of commissions.

Agency A generated \$2 Million of commissions five years ago and has been whittled down by competition, soft market, etc. to its current state. It has one owner (age 67), no producers and an employee base all over 60 years old.

Agency B opened five years ago with three young producing owners and has added staff as they have grown to their current position.

Would you pay the same multiple of commissions for each of these agencies?

That’s why a multiple of commission "rule of thumb" simply doesn't work.

(And we didn't even address the issues of non - standard vs. standard business, owned vs. brokered business and volatile or target accounts vs. standard accounts.)

AI Diamond may be contacted at www.agencyconsulting.com.

How Much is an Agency Worth?

However, the above mentioned drawbacks may be minute compared to the financial liabilities & responsibilities. These include the contractual, implied and legal. I am not sure that E&O would cover all foolish acts.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

But recognizing that the multiple of commissions is a convenient gauge for “Lazy Bones” agency owners, let’s convert the values generated into multiples for simplicity in this exercise.

Just remember ... do not value agencies with ANY consideration of multiples of commission in a serious offer.

So just for kicks ... let’s use “The Lazy Bones Agency Value Formula”.

The Lazy Bones Agency Value Formula

Agency values are determined by a straightforward measure and a couple of more complex measures. The straightforward measures are the hard worth of the business, the value of its hard assets (furniture, equipment, buildings, cars, computers, etc.) and the current value of its estimated future earnings. After all, the real value being purchased by your successors are represented by things that are worth dollars now (hard assets) and sufficient future earnings to support the purchase and profit the new owner.

So how do you estimate a quick value to your agency? Obviously, it’s best to call in a consultant who specializes in the buying, selling, merger & acquisition of insurance agencies. Their valuations are objective and stand the tests of the IRS.

But you may not be ready for that. You may simply want a quick guide to your value. O.K., Lazy Bones ... here goes. Let’s start with ZERO Value and add / subtract to the bottom line.

Hard Assets

So just how much are your furniture / fixtures, computers, printers, copiers and telephone worth? Take the depreciated figure from your last income tax return.

If it’s good enough for Uncle Sam ... it’s good enough for you!

Soft Assets

While we would all like to think that there is abundant potential for additional income in our agencies (that we, ourselves haven't penetrated), this is a part of the "soft" value of the agency, called Goodwill by the IRS. This is one of the more complex measures of agency values.

Goodwill Hunting

Does the agency have “Brand Name” recognition? The policyholders of “Mom & Pop” Insurance Agencies think of the employees as “the Insurance Company”. Goodwill Value is added when an agency is widely recognized for its service & convenience.

How long has your agency been in its present location? Less than 2 years is worth zero. 2 – 5 years is worth an extra 5% of your annual income. Add another percentage point for every year after 5.

How long have your employees been with you? Use the same formula as agency location.

What companies do you represent? If the contact can be transferred to a new owner, add 1.5 times the last 12 months income to the sales price. If not transferable, add ½ to the bottom line.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

What are your agency’s prospects for the future? If sales have been going down, subtract 3 times the revenue % difference from the last 3 years. If sales are going up, add 3 times the % difference in revenue. Here’s how to do it ...

Calculate the average earnings of the last three years as percentage of revenue. Your next step involves some projections. Project your revenue stream for the next three years by projecting forward your historical performance for the last three years.

If you feel that the historical performance is not reflective of future performance, change the projections - but footnote the changes (so you can verify whether or not these changes take place in the future). Calculate the expected earnings of the next five years by multiplying the average earnings percentage by each year's revenue expectations.

Combine all of the totals for the Hard Assets, Goodwill and Projected Performance. This total combined (for better or worse) is a fair estimate of your agency’s value.

It does not take into consideration your liabilities but neither does it take into consideration many other factors that you’ll read about later in this booklet.

So how did you do? Surprised? Disappointed? Most folks are.

Methods and Amounts of Payment

There are two most common methods for purchasing an agency's book of business. Both are wrong:

(1) Multiple of Gross income of the agency for the 12 month period immediately prior to the date of sale plus the value of the fixed assets.

(2) Commissions received from renewals of business for an agreed period of time plus the value of the hard assets.

The 1st method using gross income can be fine-tuned even further by basing the agency value on net income after normal fixed expenses have been deducted (not including the owner's compensation or benefits). This method can also point out areas of expense that may need attention - NOW!

The 2nd method is gaining in popularity due to the volatile nature of the Specialty Insurance business. Not only are our customers highly transient but the companies' instability are adding to this equation. The buyer can protect against this uncertainty by paying for only the business that renews - on the other hand - IF the market stabilizes and the buyer is super - good at customer service, more customers may renew and the buyer winds up paying more than originally estimated.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Agency Self-Evaluation Checklist

Then there’s the “Full Disclosure” method that everyone but CPAs hate.

The most difficult part of evaluation is gathering the information. But the benefits are without measure. It forces agency owners to create a clear understanding of their agency’s financial strengths and weaknesses, position in the marketplace, personnel and overall prospects for the future.

No one should ever consider entering into acquisition discussions with an agency owner who does not have the basic information outlined in this Self-Evaluation Toolkit.

Get an expandable folder in which to keep the items and check them off as they are produced.

Don’t enter into any serious discussions until all info is supplied.

General Information Checklist

- Do you have any branch offices? No ___ Yes ___
- If YES, complete a separate file for each:
 - Legal Name of Agency Street Address Mailing Address
 - Phone Number(s) Fax Number(s) E-mail address
 - Website Address Location Address
 - Date Agency Started
- Are you incorporated? ___ No ___ Yes
- If Yes: ___ “C” Corporation ___ “S” Corporation ___ LLC

The company structure is a major factor in the evaluation. “S” Corporations, LLCs and partnerships are treated vastly different than “C” Corporations because of the tax implications. Check with your tax advisor before structuring an offer.

Are you affiliated with any other business, i.e. real estate, bank, or other insurance organization, etc?

NO ___ YES ___ if YES, please describe:

Gather the following items for the past 3 years:

List of carriers represented

It was the best of times. It was the worst of times. An agency that specifically targets a niche market can have added value. On the other hand, if that niche closes, you can find yourself without a pool of prospects.

The fewer carriers represented by an agency can also add value to the evaluation. The training curve for new employees is much shorter if they don’t have to learn a plethora of new underwriting rules. On the other hand, an agency with more than 25% of their business placed in one carrier can find themselves in a bad position if the carrier changes its competitive position or withdraws completely.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

- List of all sweep accounts and other business related banking accounts
- List of liabilities due creditors / lien holders / leases not assumed by the Buyer
- List of obligations assumed by the Buyer
- Agency Tax Returns

It's been said that agency owners should keep three accounting books. One for the IRS, one for their banker and one that shows the true financial status of the agency. If the true accounting shows no profit, then what is its value?

- Monthly Commission statements by carrier and product
- Monthly P&L statements with Agency office expenses detail readily available
- Liabilities, exclusive of E&O items and agency bill balances
- Detail of all non-P&C product related revenue
- Detail of all non-premium related revenue (i.e. contingency bonuses, fee revenue, etc.)
- Commission Statements – Please attach last 3 year-end and most recent month commission statements.

An agency that produces \$130,000 in commissions (average of 13%) on a \$1,000,000 book of business is only worth \$130,000 unless the changes brought about by the new owner result in an increase in revenue.

- Accounts Receivable – Please attach past month's full aged accounts receivable list.
- Owners & Officers – Please list officers and owners of the agency including the number of shares or percent of ownership.
- Account Breakdown (for the immediately preceding 12 months)

Any business has a position in the market determined by its customers. You can only reposition the business slowly, if at all. When buying an agency you should decide whether you like the business' prospects with few changes.

- Copy of loss experience for all carriers. If “shock” losses have negatively impacted the loss ratios, have details available. Include any large losses reported but not yet included in carrier results.

If a given book of business has a bad loss ratio with a company, discount the value of that book accordingly. The company may or may not cut the new ownership slack in shaping up a distressed book. You should assume that it is likely that they will take the change of ownership as an opportunity to jettison the book.

- Copy of the agency's privacy statement and “opt-out” list (if applicable)
- Copy of carrier underwriting guidelines
- Copy of all agency – company agreement including addendums
- Personal Lines Premium – Commission – Number of Accounts
- Commercial Lines Premium – Commission – Number of Accounts

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Producer / CSR / Employee / Independent Contractor by Name

Production of each in CL Commissions / PL commissions

Carrier Information – Please provide information provided by all companies that make up the past 3 years’ commission statements:

Annual Personal Lines Premium broken down into category (i.e. auto, homeowner, etc.)

Annual Commission

% Avg. Commission

Loss Ratios

Contingency Received

Annual Commercial Lines Premium broken down into category (i.e. commercial auto, GL, Worker’s Comp. etc.)

Review every commercial account and put a discounted present dollar value on each account based on the commission less the estimated cost of servicing times persistency. I learned that without proper discipline it's easy to accumulate a lot of grossly unprofitable commercial business. In fact, I suspect the value of most small agency's commercial business is a negative number.

Commercial Lines Annual Commission

Commercial Lines % Avg. Commission

Commercial Lines Loss Ratios

Commercial Lines Contingency Received

Large Clients – List clients generating more than 1% of your annual gross commissions. Include all accounts lost within the last 12 months and indicate when & why.

Account Name - Industry Type - X-Date - Annual Commission - Years with Agency

Acquisitions – Have you acquired another agency or book of business within the past three years? YES ___ NO ___

If Yes, please provide as much detail as possible.

Do you accept brokered business? YES ___ NO ___

If yes, please list various brokers’ commission splits

Broker’s Name

Commission Split

Amount of Gross Commission

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Do you place brokered business with another agency due to lack of carriers?

YES ___ NO ___

If yes, please list various agency commission splits

Agency Name

Commission Split

Amount of Gross Commission

Prior Owners Liability – Please list outstanding debt to prior owners / partners including terms.

Please attach a copy of the purchase agreement.

Specialty Programs – Is your agency involved in any specialty type programs? YES ___ NO ___

If yes, please list details including type of program, total # of accounts, total annualized premium and commissions.

Retention – Please calculate the following:

Personal Lines Retention on a Policy basis as a percentage - # New vs. # Renewal

Commercial Lines Retention on a Policy basis as a percentage - # New vs. # Renewal

Automation –

Automation adds to the value of an agency since it results in lower marketing & service costs.

Give serious scrutiny to the agency management system in place. Many buyers have made an assumption about the effectiveness of the named brand agency management system in place. They found the system mostly defective for its intended use and would likely have sued the vendor had there been a contractual relationship between the new buyer and the agency management company. Rolling a data base to a new system is an expensive and tedious proposition.

I wouldn't even consider an agency for purchase if it doesn't have the agency's policyholder data stored on an agency management system.

Agency Management System _____

Comparative Rating Program(s) _____

Type of computer operating system used _____

Software & Version _____

Type of hardware _____

Errors & Omissions Coverage

Carrier: _____ Limit: _____ Deductible: _____

Have you had any claims reported in the past five (5) years? YES ___ NO ___

If yes, please attach a detailed description of each claim.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Historical Overview - Please provide a brief history of the agency, who started it, changes of ownership, growth, etc. If you have marketing materials that include this information, please provide copies of them.

Advertising – please provide copies of all advertising within the past year.

Employees

Comments from “Movers & Shakers”

It's a sad fact of life that it's sometimes difficult to teach an old dog new tricks. Think long and hard before agreeing to retain the employees. Older employees may have difficulty embracing changes, especially in the technological arena. Likewise, long-time policyholders may look elsewhere if their personal CSR is no longer on the scene.

Place no value on the agency's present employees. In all likelihood they will all be gone in a much shorter period of time than you expected. If the current ownership did not maintain tight hands on control you can expect all manner of freelancing ranging from theft of premiums (from the agency or customers) to conducting of other enterprises on company time.

One word of advice would be that if you are a good producer, make sure you have an employment contract that clearly states that you own the book of business and that you or the employer have the right, at any time, to terminate that contract and it doesn't hurt to include a buyout clause so that the employer doesn't feel that you are only there to use their markets and then bail out.

Though that wasn't my case, and I was quite content working at my previous employer up until 6 months ago, the employment contract allows me to begin my new venture in a turn-key situation. All I have had to do is have the name changed on all the producer codes, open a couple of new checking accounts and I am ready to roll. Of course, there was some paperwork and heated discussions along the way, but the contract was the saving grace. It would have been very ugly and much more expensive had I not had it in place.

Employment practices – Do you have an employment practices liability policy? YES ____
NO ____

If YES, Carrier _____ Limits _____

Do you have an Employee Handbook? YES ____ NO ____

If YES, please provide a copy.

Non-Solicitation / Non-Compete / Confidentiality Agreement signed by each employee?

If yes, please attach a copy of each.

List all owners Sales persons Clerical staff

Include all Independent Contractors housed in the agency.

Please include all employees in the past 24 months.

If employee is part – time, please indicate the average number of hours worked per week. Information provided should include:

Name Age Hire Date Termination Date

Licensed (or not) Title / Position Annual Compensation.

How to Sell Your “Mom & Pop” Insurance Agency

10 Not-So-Easy Steps

(1) Decide.

I suppose the decision to sell is second only to marriage in its importance. You need to carefully consider how the sale will affect your spouse or significant other, your business partner(s) if any, your family members who are involved in the agency, your employees, and last but not least, your future career. Consult your accountant to evaluate the financial impact of selling just the assets or the whole enchilada.

You also need to be thinking about what you plan to do in 3 years when the money runs out.

(2) Legal advice.

Don't consult with just any general practitioner. You need an attorney who understands the special areas that should be covered in the sale of an agency. The first question you should ask is for references on previous agency sales.

(3) Curb Appeal

My wife and I recently bought a new home in the North Georgia Mountains and placed our Roswell home on the market. One of the first things I did was clean, repair and paint to enhance its curb appeal.

First on your “to do” list should be to enhance the curb appeal of your agency, both internally and externally.

First, you might want to take down the sign that reads, “If our service is not up to your expectations, please lower your expectations”!

Operation of your office is important to everyone as your office, and your office alone, represents your company to the people that you deal with on a daily basis. When you are open, how the office is staffed, the cleanliness and neatness of the office, and the efficiency and organization of the office all influence people's perception of your agency. Add to this, your professional appearance, and the potential buyer immediately has confidence in you and your agency.

When you are open is very important. Office hours for most agencies are 9:00 AM to 6:00 PM Monday through Friday, and 10:00 AM to 2:00 PM on Saturday, and CLOSED on Sunday. You cannot be open 24 hours a day and these hours were determined to be the best hours for your business to be conducted. It is important that the office be open, staffed properly, and ready for business at 9:00 AM. It is equally important that the office remain open, staffed, and ready for business at 6:00 PM. A customer at 5:55 PM is to be treated as anyone that comes into your office during the middle of the day. Time is money -- make it work for you.

Having the office properly staffed is equally important. If you have one (1) person ready for business at a time that you normally have two (2) or three (3), the business does not get conducted as efficiently and correctly as possible.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Take a look around your agency office. Are there papers on top of papers on top of papers on top of everything? If so, how does this appear to the customer walking in your front door? This does not mean that you are not supposed to have files and paperwork on your desk but it does mean keep it as neat as possible. A desk that is busy yet neat and clean denotes a busy professional and that creates urgency in the buyer and confidence in you. Keeping your front windows clean, the carpet vacuumed, your ashtrays clean, your bathroom spotless, and the tables, chairs, and cabinets dusted all are part of presenting your best for the customer.

Office organization is important to the efficiency of the office, as well as the appearance. Everything you use in conducting your daily business should be close at hand and arranged so you can get to everything quickly and easily when dealing with a customer. Application supplies should be neat, in order, and close at hand to be as efficient as possible. Your files should be neat and organized so that you know, at all times, where each file is. Your storage area needs to be neat and organized in order to know just what supplies you have, what supplies need to be ordered to keep you working as efficiently as possible. Organization is a sign of you and your agency.

Taking pride in the work that you do also means taking pride in your appearance. Not wearing socks, hair that is not neat and combed, and clothes that are dirty or not pressed is not presenting a professional image. Remember, to be a professional you must think and look like one first.

Being a professional is more than just knowing what to do to write a policy application. It is knowing your business and everything you can learn about it, as well as creating an environment of professionalism around you by organizing your office and yourself for efficiency, maintaining it in a neat and clean manner, taking pride in its appearance, as well as yours. Sloppy offices, minds, and bodies do not create an atmosphere that cries out "TRUST ME".

You never get a second chance to make a first impression especially if that person is the one planning to make an offer to buy your agency!

(4) Valuation Process.

Gather all of the data outlined in this booklet. I know it's going to be tough but it's absolutely necessary to establish a realistic value. And you should be realistic in your evaluation. It should include tangible and intangible assets plus liabilities.

(5) Profit & Loss Statements.

There's a rumor that many agency owners keep two sets of accounting books. The one they show to the IRS (maximizing deductions and minimizing income) and the one they show their banker (minimizing expenses and maximizing profit margins). Follow the advice Polonius gave to Laertes in Hamlet, "To thine own self be true." Note the "add-back" expenses paid on behalf of the owner. It will fatten your bottom line and give a more realistic overview of the agencies potential profit.

(6) Aggressively seek a potential buyer.

Want a FREE listing of all of the "Mom & Pop" Independent Insurance Agencies in your town? Let the Internet do the work for you. Go to www.argali.com or www.switchboard.com and print out a list of nearby insurance agencies under "Auto Insurance".

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Create an introductory letter, state what you have to offer (in general terms) and await the sharks. Don't waste your time on the “bottom-feeders” but get a letter of intent from serious inquiries that is based on the validation of your evaluation through due diligence.

Many potential buyers need to be exposed to a marketing message up to seven times before making a purchase. Unfortunately, surveys prove that most marketers do not consistently follow up with their prospects. Everyone has an excuse for not following up consistently... --- Does this sound like you? ---"Even though I know I should, I don't follow up with my leads because: - "It takes too long." - "I hate typing all of those letters." - "It costs too much." - "It's impossible to track which of my leads have received which messages."

(7) Letter of Intent and Confidentiality Agreement.

Do not share any proprietary information without the signed letter of intent (LOI) and Confidentiality Agreement. Your attorney can draw up the proper documents that will best protect your interests but either party can usually terminate the LOI prior to closing the deal. A sample LOI & Confidentiality Agreement is included in this booklet for illustration purposes only.

(8) Walk a mile in the other person's shoes.

Part of the negotiation process is to point out the value to the potential buyer. How much additional revenue will be gained through the acquisition? How much expense will be eliminated through the merger? Selling your agency is a sales job. All of the agency owners I personally know started out as salespersons and were moved up the ranks to agency owner (i.e. their level of incompetence, too good to go back but not good enough to go forward; also known as the Peter Principle). Put those sales skills to work by walking a mile in the other person's shoes. Then if the deal falls through, you're a mile away and you have their shoes!

(9) On-Site Visits.

Be prepared to invite the potential buyer to sit in on as many days' operations as they wish. This strategy will backfire if you are trying to pull a fast-one on the potential buyer but gains many points for sincerity if offered. How you keep the visitor's intent from the office staff should not be a concern. They already know what's going on since there are few secrets in the insurance industry, regardless to how confidential you keep the negotiations.

(10) The Road Goes Both Ways.

Potential buyers should be willing to extend the same on-site visit courtesy to you. It's the best way to assure yourself the new owner will be able to live up to the obligations outlined in the Purchase Agreement.

Buying or Selling an Agency? Time to Check Your E&O Coverage

Part 1 of 5 E&O articles by Bob Porten

Throughout my 20+ years of underwriting agents' E&O insurance, I've seen many articles on buying or selling agencies. They often include information on agency valuation, contracts, transitional information, and client communications. However, most never mention E&O, and if they do, it's often simply a suggestion to review your policy.

Problems can arise when E&O coverage is not given adequate consideration before the sale or purchase of an agency. But you can avoid problems if your E&O carrier is advised prior to finalizing any agreements or sooner if possible.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

An E&O policy is two-party contract between the E&O carrier and the agent/agency identified as the named insured. When underwriting an E&O policy—whether it’s for a sole proprietor, corporation, or LLC, etc.—the risk is evaluated based on the exposures particular to that agency.

These exposures include the present owners, their experience, and their tenure as principals of that agency. Agency leadership can significantly impact an E&O underwriting decision. And when ownership changes, leadership changes—even if nothing else does—and this constitutes a change in exposure.

Look at just about any E&O policy, and you’ll find a clause stating that the rights under the policy are not assignable or transferable to another party. Even the most carefully written buy/sell agreement can’t get around that.

Generally speaking, E&O policies are non-transferable because the carrier accepted the risk based on the leadership in effect at the time the coverage was initiated. Therefore, if the leadership changes, the risk can potentially change. Some E&O policies, however, sanction assignment to someone other than the original party if the carrier provided written consent prior to the change in ownership.

If you’re thinking of buying or selling a corporation, don’t assume that the E&O carrier’s consent to assignment is not required because it was a “simple” stock transfer. Think of it this way: If I sold you my home, my homeowner’s policy would not transfer to you on the date of closing. You would have to apply for a new policy.

You might argue that it’s the same home, in the same location, with the same fire class, etc., as when I owned it, but from an insurer’s perspective, a new owner constitutes a change in risk. Therefore, you’ll need to apply for a new policy so the carrier can re-evaluate the exposure.

This logic applies to many types of insurance policies . . . including agents’ E&O.

Prior Acts—or “Tail”—Coverage: Make It Part of Your Buy/Sell Agreement

Part 2 of 5 E&O articles by Bob Porten

Unlike other types of insurance, which usually cover known and tangible losses, agents’ E&O insurance covers claims occurring after the retroactive date on your policy. This includes presently unknown wrongful acts you committed, or allegedly committed, that may result in a future claim.

Prior-acts coverage is specific to those individuals named in the policy, and this can significantly impact you when buying or selling an agency. For example, if you cannot obtain the carrier’s consent to assign the E&O policy when purchasing an agency, then the current E&O policy must be cancelled and you’ll need to apply for coverage.

As the buyer, your policy would not cover the former owner’s prior acts. However, there *is* a way to protect yourself. Have the seller purchase “extended reporting period” or “tail” coverage, and make this a stipulation of the buy/sell agreement.

Also, be sure to familiarize yourself with the terms and conditions of your E&O policy. This will ensure that you understand the impact of changes in exposure, claims-made coverage, and prior-acts exposure.

This advice also applies to mergers, consolidations, or other similar circumstances. These constitute changes in exposure, and you need to make your E&O carrier aware of them. Murphy’s Law applies equally to the insurance industry, and things can—and do—go wrong when you least expect it.



Bob Porten is an Account Underwriter in UMICO's E&O Department. Bob has 24 years of industry experience, 20 of which has been as an E&O underwriter with Utica Mutual. Prior experience includes time as an independent insurance agent and underwriter in the Lawyers professional liability market. Bob is a graduate of North Central Technical College in Wausau, Wisconsin with a Major in Insurance. He also holds his New York Property & Casualty Producers License. Bob and his wife Melissa live in Utica, NY.

When Buying Or Selling Agencies, Is Policy Assignment As Good As It Looks?

Part 3 of 5 E&O articles by Bob Porten

In previous articles on buying or selling agencies, I’ve focused on the importance of revisiting your E&O coverage prior to finalizing contracts, as well as situations necessitating extended-reporting-period or “tail” coverage.

There are instances, however, in which an E&O carrier will agree to assign you, as the buyer of an agency, the existing policy. In such instances, it’s advisable to get the carrier’s consent in writing.

With policy assignment, there is no need to cancel and rewrite E&O policies, nor does “tail” coverage seem necessary. But consider this scenario: A claim is presented against the agency you purchased; however, the wrongful act took place prior to your ownership.

You may think that this claim can’t be held against you because you were not the owner of the agency at the time the wrongful act was committed. This is, unfortunately, incorrect.

You *will* be held accountable because at the time of assignment you accepted responsibility for all prior acts associated with the agency you purchased. You must, of course, answer for all future allegations as well.

Policy assignment, if properly executed, may seem like an attractive option, but the more prudent choice is to acquire a new E&O policy and require the seller to purchase “tail” coverage. It’s good risk management because it separates the exposures prior to the purchase from those that follow. Think of it as a firewall.

Now let’s switch hats and you’ll be the seller. Because the E&O policy has been properly assigned to the new owner, you’ve eliminated the expense of purchasing “tail” coverage. And, best of all, you have peace of mind, knowing you’re not at risk from prior-acts exposures. So, you approach retirement with much anticipation and seemingly free of worries.

Now just suppose the new owner begins to struggle financially and the E&O policy is cancelled for non-payment, or perhaps the new owner is so busy managing another agency that the E&O policy inadvertently lapses.

What happens if a claim is made that names you along with the rest of the agency? Unfortunately, you would have no E&O coverage because, as a claims-made policy, there is no coverage if no policy is in effect at the time of the claim. Period.

If that isn’t scary enough, consider this scenario: The new owner, wanting to curb expenses, switches to a lesser E&O policy. In this situation, if you’re named in a subsequent claim, you’re not covered.

Now suppose you’re not named, but your former employees are faced with a wrongful-act claim—and the new E&O policy purchased with the intent of saving money doesn’t provide adequate coverage or, worse yet, there is no coverage.

Even if you, and your former employees, are not found liable, if there is no defense coverage, your out-of-pocket legal fees can significantly shrink your nest egg. Purchasing “tail” coverage, for as many years as you can afford, is the best way to protect yourself ... and your future.

Learn the Secrets of Effective Risk Management Before Buying or Selling Agencies

Part 4 of 5 E&O articles by Bob Porten

If you’ve been reading my articles on buying and selling agencies, you’ve already learned a good deal about the importance of proper E&O coverage, policy assignment, and “tail” coverage.

Now I’d like to share two secrets. Secret #1: If you’re planning to sell your agency, inform the buyer of your intent to cancel your E&O policy and buy “tail” coverage. This way, the buyer can purchase his or her own policy prior to the sale. Be sure, too, to opt for the maximum “tail” period available (policies vary), and negotiate the policy’s cost into the purchase price.

Now for secret # 2: If you’re the buyer, the first few years of a claims-made policy with no prior acts is a fraction of the cost of maintaining a full prior-acts policy. On the other hand, with policy assignment, you continue to pay a higher premium for prior-acts coverage. Depending on your growth after the purchase, and its effect on your second- and third-year E&O premium, the net difference is minimal.

For example, assuming you get the carrier’s consent for policy assignment, you’ll pay the existing premium for the E&O policy with prior-acts coverage. Let’s say the premium is \$5,000. If there are no rate increases and no change in exposure for the next three years, the total premium will be \$15,000

Now let’s look at the cost of purchasing “tail” coverage, assuming you’re the seller. For the purposes of this example, we’ll base our computations on three-year “tail” coverage, which will be 130 percent of the last annual premium. (I advise purchasing the maximum “tail” coverage available, which increases the cost, but protects you longer.)

Using the premium amount of \$5,000 indicated above, “tail” coverage will cost \$6,500. If the expiring policy’s premium was \$5,000 and there was no change in exposure, except that there is now a retroactive date and no prior-acts coverage, the first year’s rate will be \$3,000, the second year will be \$3,250, and the third year will be \$4,250 (again, using average prior-acts rating factors).

Now let’s add up our costs: $\$6,500 + \$3,000 + \$3,250 + \$4,250 = \$17,500$

As you can see, purchasing “tail” coverage for three years would cost \$2,500 more than policy assignment, but it’s the wisest choice. The cost also becomes less of an issue if it’s financed through the agency purchase or is part of the buy/sell agreement.

Even if you were to pay for the “tail” coverage yourself, amortized over three years, the annual cost is \$833. It’s a small price to pay for a sound risk management strategy and the peace of mind that comes with it.

What If You’re An Existing Agency Owner and You Are Buying Another Agency?

Part 5 of 5 E&O articles by Bob Porten

So far we’ve talked about a total buy out of a single agency. What if you’re an existing agency owner and you are buying another agency. Most E&O carriers will not pick up the prior acts exposure of the agency you purchase. Why? Because the premium they are presently charging you is based on the exposure present at the time your policy was issued or renewed. Those rates and the underwriting of your risk were developed without consideration of exposures presented through the picking up of prior acts exposure generated buy a whole other existing agency – one of unknown quality and with the existence of all sorts of risk characteristics that may be different from your agency. And what if that agency purchased another agency in its history and that agency purchased another agency that purchased another agency in their history and everyone picked up everyone’s prior acts and now tag, you’re it. All the sudden you are turning in claims from wrongful acts made by people you never heard of working for agencies you never heard of and all of this is affecting your present E&O exposure, your ability to keep it or get E&O and your present policy in a very uncomfortable way. Scary, isn’t it. While you may be willing to take your chances, your E&O carrier may not. One of the leading principles behind the whole idea of claims made policies for professionals is to price the product based on the exposure at hand and when that exposure “ends” to isolate and separate it from any ongoing activity. Most E&O policies require that you notify them within 60 or 90 days of an agency acquisition and during that time you have coverage for that acquisition. However, and this is very important, that coverage is only applicable to wrongful acts made since you acquired that agency – no prior acts are covered. If you do not notify the carrier within the stated timeframe you may have no coverage even for that. For the seller, their coverage may end when the agency is sold – read your policy. If that happens and you wait to long to tell your E&O carrier of the purchase only to find out they will not pick up priors it may be too late for the seller to buy tail coverage as they have a limited window of opportunity to do so.

Bottom line, thinking ahead and working within the framework of your E&O policy and with your E&O carrier if your thinking of buying or selling an agency is always the proper thing to do. Don’t wait until a claim comes up only to find out it’s not covered because you didn’t take the proper steps to keep your E&O carrier apprised of such changes. These types of changes need to be addressed when they occur, not when it comes time to apply for renewal. Be sure to familiarize yourself with your E&O policy and call your underwriter if you have questions or to communicate changes. There is understandably a higher degree you will be held to as an insurance agent in terms of understanding your own coverage so it will be tough to explain away or blame/sue someone else if something goes wrong. By the way, you cannot sue yourself under your own E&O policy in this case, that would be excluded.

Dress for the Occasion

Net Income vs. Commission

Prudent buyers want to know if there will be enough funds available for payments to amortize the investment over a reasonable time.

What matters in valuing an agency for sale is net income or cash flow, not commissions. Don't wait until you decide to sell to start “Dressing for the Occasion”. Now is the time to clean up the bottom line.

Top Ten Suggestions to Improve the Bottom Line

You can improve your bottom line (and the agency's perceived value) by either decreasing expenses or improving overall net income.

Suggestions include...

- (1) Reduce principal's (owner's) income. Get realistic. Reducing the principal's income will not only increase net revenue, it will cut Social Security, workers' compensation, retirement participation and possibly unemployment taxes. The principal's income must truly represent what it would cost to hire someone to do what he or she does within the agency.
- (2) Eliminate or reduce some of the operating expenses. Source of supplies, for example. Pagers in place of cell phones. Auto expense reimbursement tied to gross commissions being serviced.
- (3) Eliminate perks such as country club dues and the like which are paid by agency.
- (4) Increase insurance deductibles, specifically E&O coverage. Require producers to be responsible for a portion of the deductible if a claim occurs as a result of their efforts (or lack thereof!).
- (5) Review and adjust producer compensation after the first year on small accounts which will be serviced thereafter by inside support staff.
- (6) Reduce current wages in exchange for allowing staff to work (mostly) from home. Employees work at their own pace and reduce auto, hair, dress, restaurant and baby-sitting expenses. Agency benefits from reduced expenses associated with their employment.
- (7) Eliminate or consolidate branch offices into sales-only facilities. All other functions take place at main office, including telephone answering service, underwriting, accounting and claims handling.
- (8) Eliminate or reduce Accounts Receivable by converting accounts into direct bill.
- (9) Require Profit & Loss Statements on a monthly basis. Financial data must be readily available and accurate. An agency is never stronger than its accounting department.
- (10) Consult your staff. Reward suggestions for the elimination of waste and duplication.

Why Does an Owner Want to Sell the Agency?

Seller's Point of View

Sweat Equity.

The value of your business is often represented in terms beyond simple cash flow. There is the added value because of the "sweat equity" that you have spent in building it and because of the relationships you have created that will (theoretically) keep your customers for a long time. The agency represents their “retirement nest egg”.

It is hard for someone who has poured many years (and in some cases, tears) into developing their agency to realize its TRUE value in today's marketplace.

Value of Cash Flow.

Many sellers actually resent the cash flow method of agency acquisition because they feel that the acquirer is purchasing THEIR agency with THEIR money (the continued revenue flow of the business). What the seller fails to recognize is that the buyer assumes the responsibility for retaining and managing that business (for which the owner has received his paycheck prior to retirement) and takes the risk associated with the business continuation.

If the business falters, the new owners are still expected to meet their financial obligations.

The Constant Hassles of Everyday Business.

The grass has got to be greener on the other side! The owner may want to sell out so he could start another agency (only this time he won't make the same mistakes and allow it to grow too big.)

Companies are pulling out and no prospects of replacing them.

Clients do not renew due to poor service which is a reflection of the deteriorating attitude of the selling agency's principals.

Changing Marketplace.

The neighborhood has continued to evolve - downward - and lessens the likelihood of maintaining a solid book of business.

Needs vs. Value

Needs and Value are different concepts. But they become confused when an agent desires to retire and begins to calculate the financial needs required to maintain his standard of living. If you need \$250,000/year to sustain your normal lifestyle and you are generating \$80,000/year through your outside income sources, you feel that the agency sale must support \$170,000/year in income. But for how long? Agents who retire relatively young may need 20 years of income! - That is the calculation of NEED for the selling owner.

The Fair Market Value calculates the cash flow and risk potential to the specific buyer including the time that he is willing to forego profit from that acquisition while the payout occurs. What happens if that agency value only supports \$100,000 yearly payments for seven years? Agents then face the unenviable task of scaling back their standard of living (not easy for a high-flying entrepreneur) or refusing an offer that provides the Fair Market Value for their agency.

It's important for buyers to realize that, sometimes, offers are rejected, not because of greed on the part of the buyer, but because of the gap between Need and Fair Market Value.

Reduction in Living Costs.

One thing that sellers often fail to calculate is the reduction in living costs associated with the cessation of a career. Even though you may spend more time traveling or in leisure activities, personal expenses of a business owner related to business social or civic activities are often substantial. These diminish quickly once the owner retires and he will have more disposable income (or need less) to maintain his lifestyle.

In Summary.

Whether you are buying or selling an agency, if you step into "the other person's shoes" when considering an offer or a selling price, you will find the transaction can be accomplished in a less stressful manner. The seller can calculate both his financial need and a pro-forma of the cash flow potential of the agency in another agent's hands. He will understand if any gap occurs and will not have to face a real anomaly when a buyer offers a price that, while fair, falls short of the seller's needs. The buyer should always ask about the financial needs of the seller to determine whether or not an offer should be made on the available asset. If the seller has unrealistic requirements, valuing and performing due diligence will be an exercise in futility.

10 Reasons YOU Should Not Sell Your Own Agency

1. Confidentiality. Limiting the knowledge of negotiations from uninvolved industry parties.
2. Skeletons. The buyers can say what’s on their mind, even if it’s negative. The seller can feel more comfortable knowing all of the “skeletons” are out of the closet or not pertinent to the sale.
3. Agency’s True Value. A multiple of commission "rule of thumb" simply doesn't work. There are also the issues of non - standard vs. standard business, owned vs. brokered business and volatile or target accounts vs. standard accounts.
4. Maximizing True Value. To maximize value, you need trained consultants who understand the principles of business appraisals and eventual sale. A consultant can bring together all necessary parties, i.e. attorneys, accountants, etc.
5. Knowing Who’s Buying & Who’s Selling and For How Much. A consultant knows the agency market from an informed yet unbiased viewpoint.
6. Psychology of Agency Sales. A consultant can ascertain many strategic reasons for a purchase or a sale and can position both parties to maximize value.
7. Creating a Sense of Leverage. Consultants are expected to leverage the sale of an agency between several parties. Thus bringing a heightened sense of urgency but not thought of as negotiating in bad faith.
8. Taxing Issues. Improperly structured sales agreements have been known to negatively impact both buyer and seller. Properly structured sales agreements maximize the tax laws.
9. Keeping on Track. People get emotionally drained from dealing with all of the details. Irrational assumptions come out of nowhere to torpedo the deal. Since the consultant’s compensation is dependent on closing the deal, they have a vested interest in keeping it moving on track.
10. Closing the Deal. Negotiating on your own results in many starts and stops. After a time, you may just throw up your hands and decide “It’s not worth it!” Too many times deals fall apart when some sacred cow is slain. The presence of a consultant tempers and manages the emotional roller coaster and rides with you to the closing.

How to Buy a “Mom & Pop” Insurance Agency

Why Does a Buyer Want to Buy?

Buyer's Point of View:

Value of Cash Flow.

The buyer simply looks at an acquisition as a source of cash flow. The cash flow must pay for the property purchased over a reasonable number of years, after which it accrues to the benefit of the owners of the purchasing agency.

Economy of Scale.

We have a sometimes mistaken belief that the greater number of policies sold, the less cost per transaction. This is referred to as "greater profitability through economies of scale" and is entirely dependent upon the operation's efficiencies.

Increase in Policyholder / Premium Volume

Points to Keep in Mind:

Portions of the book of business may be outside your area of expertise and of no value to you but factored in the purchase price.

Policyholders may only wish to deal with a certain employee and will leave when / if that key employee decides to leave. Are any non-competes in place?

The management style of the new owners may be so radically different as to drive away a large portion of the renewal business.

Broaden Market base and Insurance Carriers Represented

Points to Keep in Mind:

Since a great deal of the value of an agency is in the renewals, it is imperative to obtain a commitment in writing from a person in authority at each company that they will remain being represented by the new owners.

Examine the past few years loss ratios to determine if a future problem is in the warming stages and is about to hatch. It also could affect any company contingency program that figures into the value of the selling agency.

Insurance companies are now required to complete a credit / criminal investigation to comply with Insurance Department Regulations. It's better to know ahead of time if a problem is going to arise before investing a lot of time, energy and expense for nothing.

Lessen Expenses through Greater Efficiency

Points to Keep in Mind:

Retraining of any personnel that come with the purchase is an almost certainty. They probably have not been taught the same business philosophy / work habits that the new owners will expect. This will result in a costly (in both time and money) retraining process.

Employees with the same responsibilities from each location may create friction and resentment as everyone "jockeys for position".

Questions to Ask Yourself Before You Start Looking

- (1) In what areas of your operation do you wish to expand?
- (2) Are you planning to keep the acquisition open as a branch office or consolidate the book of business into your present operation?
- (3) How much business will be lost if you choose consolidation?
- (4) How much additional cost will consolidation add to your present operation expenses? (More employees, office equipment, office space, etc.)
- (5) What is your expected Return on Investment (ROI)?
- (6) How much funds do you have available for the purchase and transition costs?

Top 8 Questions about the Acquisition Target

- (1) Does the agency have a good staff with experience in the markets you are targeting?
- (2) Does the agency have good carrier relations in the markets you are targeting?
- (3) Does the agency have technological systems that will mesh easily with your present systems?
- (4) Does the agency have a profit margin that will offer the Return on Investment (ROI) you have set for your operations?
- (5) Does the agency have a good chance to grow in revenue and profit using your systems?
- (6) Will the agency employees embrace your new procedures?
- (7) What are the “sacred cows” in the agency? Employees? Unprofitable Procedures?
- (8) Does the current owner have unrealistic expectations on the value of the agency?

If the answer is “NO” to any of the above questions, you should not waste any more time on that specific possible acquisition.

Your Team of Advisors

Every successful acquisition requires the participation of a decision-maker, usually the owner (The Buck Stops Here!), an integration supervisor (Somebody has to make the merger of different books of business mesh), your accountant (tax implications), your attorney (CYA) and possibly your lender. Others that might be invited to participate are the employees since success or failure is at their fingertips. Don't be overly surprised if they give negative input since more business means more workload at no increase in compensation.

Where do you find Acquisition Targets?

- (1) The owner is approaching retirement age.
- (2) The owner's family has no interest in continuing the agency.
- (3) The owner is experiencing financial difficulties through failure to adapt to the changing marketplace. This is the primary reason for agencies to go on the "fire sale auction block".
- (4) Obituary Columns. They can't take it with them.
- (5) Put out your "feelers" at every opportunity. Check with that great source of information - "The Marketing Representative". Attend every agency / company function that fits into your schedule. You could take out a newspaper advertisement but I consider that a waste of money and time.

Take it slow, bro. As the Rolling Stones say, "Time is on my side, yes it is".

Initial contact is made in a variety of ways. I have seen "exclusive offers" shot gunned via snail-mail to apparently every agency in the phone book, many no longer in business. I get offers to buy & sell agencies on a regular basis in my e-mail. Strangely though, I can't remember ever getting a phone call. I wonder why?

It's because the Acquisition Target was never clearly defined. That's Step One. I don't mean actually targeting a competitor; I'm suggesting you figure out the areas in which you wish to expand.

Would you interview a candidate for a position in your agency without first clearly stating what are the expected duties, skill qualifications and compensation package? The same holds true for courting possible Acquisition Targets on the spur of the moment.

Then you can stumble around wasting time looking for the perfect situation. It is almost always a competitor.

If you can clearly communicate what you are looking for and how much you are willing to pay, those who are ready will respond. Others will file it away until they are ready.

Rather than saying, "Open up your books to me and I'll make an offer", go ahead and make a contingent offer. Agency owners are reluctant to share their financial and marketshare positions for fear the insurance industry will find out just how close are their profit margins. Not to fear. Everyone's profit margins are razor-thin, brought about mostly from our carriers reducing commissions and transferring expenses to the agencies without adequate compensation.

Search & Screen

Or you might consider using a third party as a “go-between”. Confidentiality is maintained up to the initial meeting of the willing seller and willing buyer. After that, keeping a lid on the negotiations is almost “Mission: Impossible”. Word begins to spread and time is of the essence. I recommend Al Diamond of Agency Consulting Group (ACG) (www.agencyconsulting.com). ACG has been offering this “Search & Screen” service for many years and maintains a database of most of the insurance agents in the United States. ACG does the best job I’ve seen of keeping tight reins on the acquisition process, resulting in satisfied buyers and sellers.

Deal Killers

Greed is the number one killer of deals. Number Two Deal Killer is Time. A realistic time frame for from initial contact to the meeting at the closing attorney’s office averages about 6 months. Less than that invites costly mistakes and longer than that allows problems, real or imagined, to read their ugly head.

Then you have the Confidentiality Factor. Confidentiality on both sides is a must but it’s a fact of life that there are no secrets in this business. Carriers must be contacted (Marketing Reps love to spread the latest news in the industry) and employees will find out regardless how carefully you try to keep a lid on the acquisition process.

Assuring employees that there will be no changes is an insult to their intelligence. Of course there will be changes, some for the better, and some for the worse. And remember, the only person who welcomes change is a baby with a dirty diaper!

The deal is not done until it’s done.

The Offer

There must be no misunderstanding on this point. Both parties must agree on a method of valuation and all of the factors used in the valuation processed must be unambiguous.

Key Elements of a Purchase Agreement

Agency Assets

Agency Assets, both of the tangible and intangible type, must be free and clear of any claims, liens, and encumbrances whatever. Agency Assets are defined as the “book of business” which includes but is not limited to; all customer accounts associated with all policies; goodwill; all electronic and paper customer lists, records and files; whether past, current or prospective customers; all customer renewals; access to and control of all sweep accounts and other related business bank accounts and all other intangible assets of the agency. Agency assets also include all office equipment and other personal property if specifically identified. Evidence of ownership, including license for computer software and bills of sale for equipment, should be provided by the Seller. Exclusive use of the Seller’s name and trade names and all rights to the telephone listings, telephone numbers, fax numbers, e-mail address, websites, physical addresses and post office boxes are considered Agency Assets.

Terms of Purchase

Terms of Purchase should clearly spell out how the Purchaser will pay for the Agency assets.

Items that should be specified are:

- a. Amount of Earnest Money (if any);
- b. Method of calculation of Purchase Price;
- c. The sum paid to Seller at the closing; and
- d. When & how the balance of the sales price will be paid.

Generally, the seller is responsible for all debts, premiums, claims, statement balances prior to the date of closing. The Purchaser is responsible for those items from then on and has the right, but not the obligation, to pay the seller’s outstanding obligations and offset the amounts paid against the unpaid balance of the sales price.

Accounts Receivable

Accounts Receivable belongs to the Seller. Purchaser agrees to attempt to collect all funds, including accounts receivables on behalf of the Seller. The easiest way to do this is for the Seller to execute a Limited Power of Attorney that enables the Purchaser to endorse checks made payable to the Seller.

Purchaser should provide the Seller with monthly accounting reports that lists items received against obligations and exchange checks depending on whichever way the balance dictates.

Seller is not responsible for unearned commissions which result from policy cancellations, endorsements or audits after the date of closing but is not entitled to additional commissions which result from endorsements or audits after that date.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Carrier Incentives

Buyer is entitled to all profit sharing, override or bonus commissions, prizes and trips, advertising allowances, or performance incentive compensation received by Seller or Buyer on or after date of closing.

Hold Harmless Guaranty

Seller should agree to indemnify, defend and hold harmless the Buyer for any and all liability for acts prior to the date of closing. Likewise, the Buyer should execute a similar guaranty for the protection of the Seller for any and all liability after the date of closing.

Errors and Omissions

Seller should maintain and provide proof of an E&O policy for three (3) years from and after the date of closing or at the very least, purchase a “tail” policy for the same length of time.

Agency Appointments

The Purchase Price should be contingent upon approval of the transfer of the agency contracts and / appointments of the Seller’s current companies. Deductions should be made for the value of the book of business for any and all carriers that do not approve of the asset transfer in writing.

Non-compete, Non-Solicitation, Confidentiality Agreements

Buyer should require the Seller sign a transferable non-compete, non-solicitation and confidentiality agreement.

Agency Personnel

Buyer should require the Seller obtain and provide transferable non-compete, non-solicitation and confidentiality agreements from all agency personnel.

Assumption of Liabilities

Liability cannot be transferred without the consent of all parties. Specify by name which obligations the Buyer wishes to assume and contact the parties prior to the date of closing. Examples of common liabilities in an existing agency are employees, lessors (real or personal property, equipment or otherwise), vendors, suppliers, advertisers and utility companies.

Assignment of Buyer’s Interest

What happens if the Buyer decides to “flip this agency” and resell it to someone else? The Buyer should have the unconditional right to assign or transfer its rights but should guarantee all payments due the Seller.

Background Checks / Privacy Issues

When the Gramm-Leach-Bliley Financial Services Modernization Act (GLBA) passed, privacy-related issues became a critical component of our industry. GLBA allows consumers to “opt-out” or prohibit certain uses of their personal information by financial institutions.

Any due diligence activities should include a determination of the privacy policy in place in the agency being considered for acquisition. Potential Buyers should begin by obtaining a copy of the agency’s or carrier’s privacy statement to determine what personal information is permitted to be shared. They could be using a carrier’s privacy statement to guide them in the sharing of personal information or the agency may have developed their own privacy statement.

The content of these privacy statements will provide information regarding whether a “do not share” policy or an “opt-out” policy is in place.

“Do not share” – this type of policy indicates that the agency has committed to not sharing any non-public information of their customers.

“Opt-out” – this type of policy indicates that the agency / carrier may share non-public information, but gives the customers an opportunity to “opt-out” of sharing their personal information.

If an opt-out policy is in place, it is critical for the Buyer to obtain a copy of the agency’s opt-out list. These steps are taken in an effort to ensure that the Buyer and Seller are not exposed to legal and / or regulatory action during the due diligence phase of the potential acquisition.

If the Seller has its own privacy statement, which provides for sharing non-public information, any opt-out list should be readily available from the Seller. If the Seller is relying on their carriers’ privacy statement (which is the most common method), it can be readily found on the carriers’ website. If the carriers’ privacy statement provides for sharing non-public information, the opt-out list is available to the Seller just by asking.

Seller should agree in writing to allow Buyer to conduct a background check to verify information provided by the Seller. Authorization should be given for any investigator, credit bureau, former employer, reference, insurance department, insurance carrier or other individual or entity to respond to such inquiries. The agreement should release any and all parties connected with the requests from all claims, liability and damages for whatever reason arising out of the verification.

Settling Disagreements

It's hard to predict what kind of issues, claims or disputes that may arise out of or in connection with the purchase of the Agency Assets. If the Seller and Buyer are not able to resolve the dispute by negotiation, I suggest the purchase agreement include provisions for Mediation and Binding Arbitration.

Seller and Buyer should agree to use mediation rather than filing suit. How does that work? Seller and Buyer will select an independent mediator agreeable to both parties and pay equally for the cost of the mediation process. The mediator sets up a time and place that best fits the schedules of both parties.

If the mediation process doesn't resolve the issue, then the matter is presented to binding arbitration administered by the American Arbitration Association. The prevailing party is entitled to be reimbursed by the losing party for and / or have judgment for all of their costs and expenses, including reasonable attorney's fees and legal expenses.

Should You Use a Business Broker or Agency Broker?

Until recently there was virtually only one way an agency sold. When an agency principal wanted or needed to sell, he was forced to contact a "friendly" competitor due to the complexity of the industry. The "friend" would "buy" the agency for a percentage of the renewal premiums.

There are many problems with this type of arrangement. I will only mention a few. The first thing the "friend" does is start "rolling" the business to his existing contracts so that the renewals drop steadily. He then tells his "friend", the seller, "Attrition is really a killer." The low price he agreed to pay is deceptively reduced and the seller would incur substantial cost to monitor the process.

However, the above mentioned drawbacks may be minute compared to the financial liabilities & responsibilities. These include the contractual, implied and legal. I am not sure that E&O would cover all foolish acts.

The price paid by the purchaser is usually less than that paid to a "producing agent". This combined with the "additional" cost associated with employing a producing agent, i.e. office space, additional clerical, insurance & other benefits, the buyer's side of the deal smells very good.

Since Agency Brokers has come onto the scene there is now another alternative. Agency Brokers do assist with mergers, valuations and even the above mentioned type of sale by two consenting adults who wish to engage in such activities. However, the vast majority of their efforts are involved in the "new" alternative.

This "new" alternative is not really new at all, but it is new to the insurance industry. The Agency Brokers assist in the sale of insurance agencies as other businesses are sold. In precept, this is very much like a commercial real estate sale with many special differences.

The price is negotiated. But once agreed upon, it is "set in stone." The buyer is going to pay the "agreed upon" price come fire or flood. There is no "floating" up or down with renewals.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

This is the norm with all other business sales. It does not matter whether it is a corner convenience store, a neighborhood hardware store, a hotel or any other type of business. There are more than plenty of business brokers to serve them.

Until recently the insurance industry was not courted by business broker firms. If one ever did get involved in the sale of an agency, they never made that mistake again. This was because most of the business brokers could not properly understand the complexities associated with such a sale.

Most business valuations are based on a combination of several items. These include inventory (bread, bolts, or bottles), personal property (cash registers, equipment, fixtures, or furniture), real estate (property or lease of it), gross sales and net income.

This is complicated enough, but the addition of loss ratios, persistency's, company contracts which can be cancelled at any moment, and the average bookkeeper's head is spinning. It is even more complicated when you include the differences in valuations for standard vs. nonstandard, personal lines vs. commercial lines, good markets vs. average markets vs. below average markets. The list goes on & on...

Every agent I talk with seems to know more about pricing an agency than I do. At least most of them are convinced they do. They all seem to know the "rule of thumb" but surprisingly, everyone has a different size thumb. I have heard everything from \$0.40 to \$3.50 on the annualized commission for a nonstandard agency. Standard agencies are supposedly selling for as little as \$0.80 to as much as \$4.50 on the annualized commission. You should not use only one factor to value an agency. To do so defies sound business logic!

There is no scientific formula that includes every factor for a precise valuation of an agency. There are as many variables in a nonstandard agency as in a standard agency. Markets, agency billed, in-house financing, location and many other factors affect the value on an agency.

But you can get a "fair market value" price. This is done by making as many potential buyers as possible aware of the pending sale. This is not done by sticking a sign up in the front of the agency or talking to everyone and his brother about it. Discretion is a must!!!

You should never provide any identifying or confidential information until you have secured a "nondisclosure" form signed by the potential buyer. Please take every precaution to be sure that an agency's employees, customers, companies and competitors do not know of the agency's pending sale while notifying as many potential buyers as possible of its availability.

How To Collect The Purchase Price

By Jed Berman

Originally printed in SPOKES – January / February 2000

Insurance agents often find it advisable to sell their agencies. There have already been many articles written about setting the price for an agency and avoiding personal liabilities after the sale. As a rule of thumb, the price of a nonstandard insurance agency is between 60 and 75 percent of the annual commissions. And the best way to avoid personal liability after the sale is to provide accurate information to the buyer about unearned commissions and other contingent liabilities. But the seller's primary concern after a sale is to be paid in full.

There are several varieties of agency sales contracts, from the very simple to the complex. The price of the agency or agencies being sold, the identification of the assets involved, the post-closing noncompete clause, and other provisions dictate the proper sales contract to use. But the heart of any sales contract, from the seller's point of view, is the provision for payment of the sales price. In an arm's length transaction, this provision creates the tension between the seller and the buyer.

Almost any seller would prefer to be paid in full at closing. Perhaps the exception is a seller who wants to defer capital gain over more than one year. Almost any buyer would prefer to delay payment as long as possible. This allows the buyer to leverage the purchase by using the profits from the agency to pay the purchase price. The final provision for payment represents compromises between the seller and the buyer. But what can the seller do to increase the chance of collecting the sales price?

It helps to know the situations where a default in payment can occur. Most of the cases in which the buyer fails to pay the full purchase price for an insurance agency fall into two categories: (1) those in which the buyer simply does not have enough money to pay, and (2) those in which the buyer claims that the seller misrepresented the value of the agency.

The safeguard against a buyer who is unable to pay is to investigate his or her financial condition before the closing. A seller should not be embarrassed to ask the same questions of the buyer that a bank would ask. These include the buyer's history in the insurance business, personal balance sheet, recent tax returns, and professional references. A buyer who refuses to provide this information may be concealing unfavorable matters. For example, a buyer who defaulted on a prior agency purchase would be unsuitable for another purchase no matter what the explanation for the failure would be.

The safeguard against the buyer who claims misrepresentation is to provide complete financial disclosure about the agency before the closing. No longer do the courts accept the doctrine of buyer beware. When a seller makes a misrepresentation, even a negligent one, or a material omission, the buyer has been injured and can rescind the sale or sue for damages. The result is that the seller is not receiving the full purchase price. The impact on the seller's income is obvious.

The disclosures are not difficult. They should include profit-and-loss statements, balance sheets, tax returns, and bank records from at least the last three years. It is very helpful to have the accountant for the agency speak directly with the buyer or the buyer's accountant. The lawyers for the parties, if any are involved, should also be in direct contact with each other.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

The advantages of full disclosure are apparent. They include: (1) a buyer who probably possesses business sense, (2) minimal risk of default in payment of the sales price, and (3) avoidance of an unpleasant lawsuit alleging fraud or misrepresentation. The cost of litigating such a lawsuit can take away a large portion of the profit from the sale.

In addition to these major considerations, the sales contract must also contain provisions for securing payment of the sales price. In brief, these would include the personal guaranty of all principals in the corporate buyer; a security interest in the assets being sold; and the right to inspect the records of the agency after the sale. The last suggestion requires that the seller actually make periodic inspections of the accounts and bank records of the agency until the sales price has been paid in full.

There are other methods to increase the probability that the sales price would be paid, but the foregoing are recommended as basic ones. The sale of an insurance agency should be beneficial to both parties. When the sale is structured properly and the parties are responsible and competent, then the transaction will be a success for both of them.

Jed Berman is a partner with Infantino and Berman in Winter Park, Florida. He has been representing insurance agents and agencies for more than 20 years. He is also the managing attorney for Specialty Agents Legal Defense Fund. He can be reached to discuss this article at 407-644-4673 or JBLAW4673@aol.com

Protecting Your Investment When Buying An Agency

By Jed Berman (Originally printed in UNITE – March 2000)

My recent article about selling an insurance agency generated a lot of interest. The interest in last month’s article prompted many readers to ask questions about the other side of the transaction: buying an agency. As a result, this month I offer some suggestions to the prospective buyer.

Buyer v. Seller

The basic concept is that the buyer opposes everything that the seller favors. Where the seller wants to obtain the highest price for the agency, the buyer wants to pay the lowest. Where the seller wants to receive most or all of the purchase price at closing, the buyer wants to pay as little as possible. And where the seller wants to move onto other ventures and forget about the agency he or she sold, the buyer needs the seller to be available to answer questions about the agency operations and, more important, to stand behind any representations about the assets, including the book of business.

Any sales transaction requires some degree of due diligence. This should start with an evaluation of the seller's general reputation. How long has the agency been in operation? What percentage of customers renew their policies? Of course, this can differ greatly between a standard and a nonstandard agency. How do the customers react to the office personnel? This should be apparent from observations at the office without intruding into individual transactions.

The next consideration should be the motivation of the seller. Is the sale being made for sensible reasons? For example, is the owner retiring? Is the owner consolidating the operations of several offices? Is the owner changing occupations?

Sensible v. Questionable

The danger signs about the seller's motivation for selling should be evaluated. For example, has the agency been in operation for only a short period of time? Is the owner or the agency under investigation by the Department of Insurance? Have any insurers terminated appointments of the owner? Both the sensible and questionable reasons for the seller to sell will have an impact on the sales price. However, where there are too many danger signals, it may be best to pass on the transaction.

Due diligence also involves an investigation of the financial records of the agency. This aspect may require the assistance of an accountant, financial advisor or attorney. Although the law is imposing higher standards of honesty on both parties to a sale, this does not help a buyer who has paid the full purchase price, or a large portion of it, and then discovers that the business is in debt or has no market. The time and cost of litigation often makes it impossible to pursue the dishonest seller. Also, the seller may not be financially able to pay a judgment.

The minimum due diligence financial investigation should include these items:

- ❖ corporate tax returns for three years (most likely they will not be audited because of the expense),
- ❖ binder books,
- ❖ monthly and annual statements from the agency's insurers showing premiums and commissions,
- ❖ Statements from premium finance companies, and internal records of accounts.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

The buyer should require the seller to sign a statement representing and warranting that the financial documents provided are true and correct. This should be attached to all records provided to the buyer, and the records should be retained by the buyer.

The expense side of the agency should also be investigated. Be sure to obtain copies of all real estate leases with estoppel letters from the landlords indicating the remaining length of the leases, the existence of any options to renew, and the status of lease payments (Are they current?). Find out whether the leases are assignable on the same terms. Advertising is another important agency expense. Obtain copies of all advertising contracts with estoppel letters from directories and other advertisers regarding the status of payments and renewal privileges, For example, in Yellow Pages directories, it is often an advantage to be the first agency listed. Will the directory honor the position after a sale of the agency?

The dreaded unearned commissions must be reviewed. If the seller can provide you with accurate information about unearned commissions, and he or she remains liable for the payment of those accruing prior to the closing, you should require that at least that portion of the purchase price is withheld for a reasonable period of time after closing to be sure that the debt is paid.

Tangible v. Intangible

After you are satisfied about the financial investigation, you should review the assets included in the sale. This applies whether the sale is of corporate stock or only of the assets. I assume most readers understand the distinction, and I will not detail the advantages of one type of transaction over the other. However, both tangible and intangible assets should be listed. The former are items such as computers, and the latter are bank accounts and other items that represent value. The seller should disclose whether the assets are free and clear or encumbered. You can verify this with an information request to the proper Department of State for secured creditors and an inspection of the public records for the county in which the business is located for judgments. You must also ask the county sheriff about writs of execution, because a lien against personal property can be created by docketing a writ of execution with the sheriff of the county in which the property is located. The effect of such a lien is the same as one created by the debtor giving a security interest in property to a creditor.

Now that you are satisfied that the price is fair, the seller is credible, and the records and assets are satisfactory, you can finalize the contract for sale and purchase. This will include the allocation of the purchase price to the various assets, the remedies for the parties in the event of default, and a noncompete provision. The allocation of the purchase price, especially between assets and the noncompete provision, will affect the tax treatment of payments after the sale.

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An Open Letter to Agents who Feel They MUST Merge, Acquire, or Sell

By Al Diamond

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I've just completed my "umpteenth" consultation to an agent who felt panicked that he has to acquire, merge or sell because "everyone" tells him that he is too small to survive (including, unfortunately, myself in the articles in the PIPELINE and other major industry magazines). What we obviously haven't gotten across to the agents is that organizational change and/or even growth, itself, is needed by some - not all - smaller agents. Many agents, like the one in the letter below, have found the correct formula for success. They have just forgotten how to practice it. So I decided to publish this letter in the hope that it rings a bell for many smaller agents who need to get "turned on" to insurance again, not just change for the sake of change.

Dear _____:

Thank you for inviting me to help you clarify your needs and desires for your business.

It intrigues me how insurance agencies can be so similar, yet so unique. There are thousands of small agencies, like yours, operating in the US. However, size does not signify similarity. You have created a unique situation evolving around your personality and your expertise in order to earn a good living in the insurance business. You tried working for others early in your career and decided that you needed to run your own business life in order to maximize your effectiveness and satisfaction, even though you lost the economies of scale of a large firm as the result. Now, several years later, your enthusiasm has waned and you seek change to make it somehow "better". When we first got together, you assumed that "better" meant "different". I believe that our meeting may have clarified that for you.

_____, you are in mid-life crisis. Enjoy it; it's the only one you'll get! But don't let the depression of sameness and the feeling of life's futility spoil the good thing that you've built for yourself. Do you need change? Absolutely! Do you need to buy, sell, merge or take on other people's problems to do so? NO!! I think you'll agree that you have enough doubts and problems of your own. You certainly don't need someone else's at this point in your life.

I run into many people who have gone through what you are now feeling - you don't like the business anymore - the customers aren't as "nice" or loyal as they once were - the companies don't treat you with the same respect that you feel you once had - you see premiums (and commissions) declining as you continue to refine the insurance programs of your customers, but you get fewer thanks for it and you find yourself working harder to keep up. These are feelings shared with most of the industry today.

Many (too many) agency owners seek change the same way you did - do something different - maybe it will be better - MAYBE. Those changes usually mean more and different problems and the pre-existing problems don't get solved, they just get complicated. But these agents are men (people) of action and risk takers, so they turn to organizational changes like mergers, acquisitions, clusters and sales to solve their problems. This simplistic answer is like the hundreds of agencies who spend thousands on systems upgrades in the vain attempt to resolve what are actually people problems. Agency Consulting Group, Inc. gets a lot of business from addressing the Real problems when the agencies realize that their systems investments didn't solve their real problems.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Are there agencies out there that will profit from hiring producers, acquiring agencies, clustering, merging or selling? Certainly. But they understand their needs by focusing on their Vision, Mission and Strategies, inclusive of their personal life goals. If the agency can not solve their problems or achieve their goals without organizational changes, then we help them achieve those changes. Most agents are good technical insurance professionals and many are good salespeople, but they have little experience in organizational development. We have spent twenty years honing organizational developments skills.

In your situation, I believe that while you may be burnt out, you are certainly not used up. You have found the right formula for you to earn a comfortable living for you and your family for as many more years as you care to do so. The formula includes not being "all things to all people" and focusing on insuring a small number of clients who can help you meet your financial goals without a large staff. This formula works for you. Five years from now you may need one more expert technician and sufficient additional clients to satisfy your carriers while continuing to insure you a large enough salary to satisfy your current and retirement needs. But you can easily do that yourself if you can get yourself motivated. That's where I come in.

Just as a good psychologist can help you regain balance in your personal life, my role can be to get you motivated and keep you focused and excited about your business career. Think of me as your personal auto mechanic. You have a specialized vehicle that requires a rather high level of maintenance right now. Once we have it properly tuned, it can run for 100,000 miles, but it will take some tinkering and fine tuning to get the engine operating up to speed.

We have started that process with the consultation last week during which we decided that your best interest would be served by getting you re-motivated to sell. We focused on the business plan that you drafted (perhaps tongue in cheek) for your companies and on the Vision Statement (attached). I'd like to speak to you in a month or so to see if this one session was sufficient to bring you back in focus. If not, I'd like to help you by acting as your counselor and assisting you with the design of marketing programs and other strategies that will simultaneously get you excited about the business and create the road-map for your agency's operation. You see, the greatest strain on the small agent is the loneliness of ownership. It may be advantageous to put me "on staff" as your Strategic Planner to have another professional in your corner without buying the baggage that goes with partners. Call me with any questions or to schedule our next meeting.

Growth is a ticklish subject. If you are making a good living and are satisfied with your client base, then growth may be motivated by your companies, not by your internal needs. This will never motivate positive change any more than adopting a consultant's recommendations when you don't believe in them. They are not internalized and you only agree to them because of a crisis or in panic over the future. On the other hand, if you see retirement looming and you need a perpetuation income larger than your agency can currently bear - or if you have children (or younger owners) coming into the business and they need to be supported as well as you, then growth is supported by your own internal needs. There are many ways of sponsoring growth. Our jobs as consultants are to make sure that you are only addressing those changes that are valid for your best interest and long-term well-being.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Acquisition Tips ‘n Tools from an Agency Buyer

A few things I would recommend when doing acquisitions.

- 1) Allow yourself at least 3 additional months on top of your original take over date.
- 2) Verify all lease arrangements for the location.
- 3) Have your Buy/Sell agreement professionally drafted with an attorney.
- 4) Seek legal and accounting counsel before purchasing.
- 5) Before your operations begin, check and recheck with the companies to make certain they have in accounting the correct agency sweep account numbers.
- 6) Follow up at least a week in advance before takeover to make sure all agency codes are correct with the companies.
- 7) Make certain all agency management software will convert if the new agency is using a different software package than the one your current agency uses.
- 8) Be certain all computers are up to date and not infected, it is well worth the money to have all systems professionally checked out.
- 9) Unless you want to live at the agency, try your best to hire experienced agents with a management background.
- 10) Be sure to ask yourself over and over, how far geographically I really want to expand.
- 11) One of the most important is to be sure to have enough liquid monies available on hand to carry the new location for at least 2 months worth of operating expenses, and then add 25% to that number for surprises. Do not count on receiving commissions for this period of time, if you do then that is just good news, but be prepared.

These are a few in no particular order, hope some of this will help.

Top 10 Key Factors of “Fair Market Value”

How do you calculate “Fair Market Value”? It’s not easy but in general you discount or add to the agency income using key factors. 5% + or – of the last 12 months’ income is an acceptable figure.

Here are some examples:

- (1) Carrier Approval
- (2) Employee Non-Compete / Non-Solicitation / Confidentiality Agreements
- (3) Carriers: Bottom-Feeders or Selective?
- (4) Class of Business Written: Nonstandard Auto Only or Full Lines?
- (5) Niche Markets: “No Habla Español?”
- (6) Leases: transferable or unbreakable?
- (7) Licenses: Current or Non-existent?
- (8) Agency Operation: Manual or Automated?

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

- (9) Receivables: Efficient collection procedures or Write-Off King?
- (10) Payables: Trust Account adequate or robbing from Peter to pay Paul?

Sweetheart Deals ... are you the next sweetheart?

Carriers have been known to pay higher commissions / contingencies to favored agencies. If the same deal isn't transferable to the new owner, the calculations should be based upon conditions.

Contact your marketing reps. The single biggest factor in evaluation of an agency's worth is the likelihood of current policies being renewed. You are buying a “revenue stream”, made up mostly of renewals. Be aware that even if you are appointed to become the new agent of record, you might be canned with a notice that doesn't have to list a reason.

What It Costs

If it doesn't currently show a profit, why would anyone want to buy it?

Three years of historical data is a minimum requirement. Five years is even better. Be prepared to explain every item on your Profit & Loss Statements.

What changes took place? How did they affect the P&L?

If It Doesn't Fit ... You Must Split!

Avg Loss ratio = Less than 62.5% for auto for past 3 years

Less than 53% for personal property for past 3 years

Less than 45% for commercial lines for past 3 years

FACTORS IN DETERMINING THE VALUE OF THE AGENCY

EXPIRATIONS

Cross-selling or rounding out the existing book of prospects can result in a great untapped source of commissions - IF you have the desire & ability!

RENEWALS

Possibly the single greatest factor in the value of the agency. Check the last 18 - 24 months for renewal persistency. A steadily decreasing percentage may be a BAD indication.

RECENT LOSS OF CARRIERS

Don't just take the word of the seller as to the reason. Get permission to contact the carrier directly. If the seller hesitates to allow you to speak directly with the carriers, Caveat Emptor!

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

PROFIT & LOSS STATEMENTS

The P & L Statements for the past 3 years contain many indicators of potential future earnings (or possible downward trends!)

RECORD KEEPING & FILE MAINTENANCE

If agency records have been poorly maintained in the agency, not only will considerable time and expense be expended in updating but the likelihood of E & O “snakes & time bombs ” will affect the agency's value.

POSSIBLE COMPETITION WITH A PRIOR OWNER, SHOULD THERE BE ONE

If the selling agency was purchased from another, who signed a noncompete agreement to be effective as long as the present owner has the agency, what happens once the agency is sold?

Roll, Roll, Roll Your Book

How easily can you roll your business? Do you have your policyholders’ rating information readily available in comparative rating software? If not, your agency value is diminished by prospective buyers who wish to roll the business into other carriers. The cost of reentering the data should be deducted from the renewal commissions. But having the information in a format that makes rolling easy does not add to the value. Its value is included in the evaluation since you should be doing this anyway.

What would it take for you to consider moving your policyholders to another carrier? Lower Rate? Lousy Service? Higher Commission?

May I suggest what should be your major reason for “rolling your book”?

The Independent Insurance Agency System proudly advertises that “we represent many carriers and search for the carrier that best fits a policyholder’s situation.”

In the past we could rationalize our lack of effort to requote a policyholder at renewal by saying to ourselves “All things being equal, the company I placed them with is still best for the client.”

Independent Agents have a duty to personally requote each policyholder at their next renewal if for reason other than assure their client (and themselves) that you continue to look out for their interests. If you do not requote them, then please consider changing your sign to read “Captive Agent”.

They Went That-a-way!

Will the increases at renewal prompt your customers to heed the constant barrage of advertising which encourages the public to “Buy Direct and Cut Out the Agent?”

Possibly.

What can you do about it?

The answer is at your fingertips.

You can use those fingertips to scratch your head in confusion or you can use those fingertips in a more proactive way.

Personally contact each of your policyholders and explain the new ownership changes. It’s a great time to review your policyholders’ needs / situation which may have changed since the original inception date.

Re-quote each of your policyholders to see if it would be in the best interests of the agency and policyholder to transfer the coverage at renewal.

Offer a simple flyer which explains in plain language how (& why) this new ownership will be of benefit.

Assuming you contact your client or your client contacts you instead of just taking their business elsewhere, I predict the most common question asked of agents will be “What’s going to happen with my policy?”

Depends on the situation...

- Use the opportunity to re-underwrite the risk with your carriers. If it’s still the most competitive market, you’re able to demonstrate the value in keeping the policy in force.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

- If another carrier will be better for the client at renewal but not financially possible to cancel and switch at this time, assure your client that you will transfer them at renewal.
- Consider offering to cancel the current policy and rewrite with another carrier. Before doing so, you may wish to confirm that the new carrier will honor transfer discounts and the canceled carrier will honor pro-rata cancellation since coverage is being placed elsewhere.

I can think of a couple of No-Nos...

- Advise your client NOT to allow the policy to cancel for non-payment. Carriers are required to notify the Department Of Revenue of termination of coverage.
- Don't advise your client to delete coverage to offset the increase.
- Don't process endorsements without a client's signature. You might find yourself in an E&O situation while trying to help out an upset customer.

Will the increases at renewal cause a mass exodus to the lowest premium on your comparative rater?

If there's one adage that is true, it's that you get what you pay for. So before you roll that customer into the company with the lowest rate, ask yourself if that company offers the product that you want to represent. Do they offer the service or do they rely on you to provide most of the service? Do they offer software to allow you to easily complete the application process or do you have to hand-write the app? Do their computer systems produce timely, clear, accurate bills and renewal notices or will you be on the phone constantly trying to clear up problems?

And equally important ... does the company offer adequate commissions? Of course a company that pays ten or even eight percent commission will have a lower rate than one offering full (15%) commissions. But can your agency survive on half commissions? Industry research shows that any client who generates less than 13% commission is a guaranteed loss. 13% seems to be the “Break Point” for Specialty Agencies.

So judge each company based on the services they provide, their stability and A.M. Best rating, their features and abilities and how good-looking their marketing rep is (just checking to see if you were paying attention).

In short, look at the entire package that you are selling to your customer. Then, when you look at the comparative rater, pause for a moment and really look at each quote, not just the down payment. If the rate is a few dollars lower than the next two carriers that offer super service, ask yourself “Am I not a good enough salesperson to sell their features instead of the lowest rate?”

Always remember that this is **YOUR** customer, and that to your customer ... **YOU** are the Insurance Company. If your customer is unhappy with the service or the claims handling, they'll soon be some other agent's customer.

File Storage & Retrieval

Many carriers expect the agency to be able to produce documents and original signatures for up to seven years. Does your agency have this information scanned? If not, the agency value is diminished for two reasons: (1) someone would have to search for the documents, and (2) someone has to pay for the storage. Factor the cost for up to seven years. One of my favorite former owners has his files stored in his basement.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

By the way ... does the responsibility of producing such documentation transfer to the new owner if the company agrees to make them the “agent of record”? The only way to find out is to add that to your list of questions for the marketing reps.

If the answer is “Yes”, you need to carefully consider the assumed liability. It’s not a matter of “if it will happen”; it’s a matter of when!

The Urge to Merge

Judge Business Partners by the Same Criteria You Used To Pick a Spouse -

Why do you think so many partnerships fail? Why do good friends or even family members end up hating each other after going into business together?

Simple: they didn't look at their partnership like a marriage. In fact, a partnership is even more volatile because it's basically a marriage without "sex."

That means it's even more important to do some "due diligence" upfront to make sure both of you are compatible.

Are both of you in the same financial position? Or, does one of you need money right away while the other is wealthy?

Do you both have the same exact strengths? Or, is one of you a "people person" while the other one is a "behind the scenes" type?

Do you share the same vision for the business? Or, does one of you want to build an empire while the other one just wants a steady paycheck?

Are you both flexible? Or, is one of you dogmatic, hard headed, and impossible to work with?

These are just a few of the questions you must ask yourself and each other before you enter into any kind of partnership.

If you're not honest with yourself and each other upfront, your partnership and business are doomed from the start.

Evaluating based upon revenue does not take into consideration the cost of producing the business. Take for example, 2 agencies that each produce \$130,000 in commissions each year. One of the agencies has streamlined procedures and automation that produces business which needs little service and produces a profit each year for its owner. The other is actually losing money because the inefficient staff and procedures cost more to sell & service than the income generated. A merger could result in the profitable agency owner supplementing the partner who is losing money.

Why My Merger Failed

by Ino Betternow

Recently I told Eddie that I had been in a merger and had failed. Eddie said, "Did you know I was doing a special FYI Edition about 'Merger - Mania'? Would you mind telling your story?" I told him I didn't mind him printing my story if he didn't give my name. There are some people that would read it and rate me a high risk to do business with! *(After reading his story, I gave him the name Ino Betternow! - Eddie)*

Not only did I fail in an insurance agency merger, I have failed in the used car business, the security systems business, paid too much for an agency, and I have had a few failed insurance offices. *(I asked him "Why don't you try something else besides insurance?" To which he replied "I can't! It's the only thing I'm any good at!" - Eddie)*

Each one of my failures was similar in that it wasn't the PLAN but the PLANNER.

Mistake #1: Merging with and/or hiring the wrong people. They say a sales person is the easiest person to sell. I think the reason is "GREED". If someone makes it appear we can make a lot of money (If only we invest, etc.) we bite.

Mistake #2: Not getting professional advice with what I wanted to do. NEVER, NEVER use the same professionals (Agency Evaluator, Accountant, Attorney, etc.) that the other party uses.

Mistake #3: Depending on someone else to do the job I should have been doing.

Mistake #4: Getting into a business I knew nothing about. (The best way to get out of a business you know nothing about with a small fortune is to go into it with a large one! - Eddie)

Mistake #5: Paying salaries rather than commissions - not having incentives based on performance - and that includes owners!

On the subject of the Failed Merger, I truly regret the planner did such a poor job. The merger was many years ago but given the same conditions I would do it again ... under a different arrangement. A lot of planning went into the merger - it was a plan made in Paradise. Just one little ole mistake (well, maybe more than one). There were no provisions for when one of the party's existing books of business went sour (that means the projected income did not come in). That was number one.

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

A couple of other things did not make the merger go as well as it should:

1. Key Employees: The Jealousy Factor, the Pay Factor, I Work for Him Factor, That's Not My Job Factor, etc.

2. Owners having a salary with no provision for the sour times and no provision to pay the owner who did most of the work and was responsible for most of the income for their individual efforts. If you aren't willing to be paid what you are worth, maybe you should consider getting into another line of work and join the union. This is not to criticize union membership ... it is just to say there is a difference in being an entrepreneur and being a member of a union. When you are an entrepreneur, you make the decisions. When you work for a union, someone else makes the decisions.

3. Merging and Buying an agency are similar. You need to know what you are doing (buying). With one agency I bought I broke the first rule when analyzing the book of business. I paid one & one-half times commissions and then lost the two largest commercial accounts. Since then I have read a book on mergers and acquisitions and they are called "target accounts". I should have read the book first!

4. Know the person you are merging with or buying from. A few years ago, a large real estate firm with a smaller insurance agency bought an agency in Macon and paid four times gross. SAFECO recently bought American States for two times book (with negative Best's implications). Certainly I recommend getting evaluations but the reality of the market is "Who is the Buyer?" Recently an agent asked me for how much he should sell his agency to a bank. I gave him a couple of companies that do agency evaluations - I got the names out of the FYI - and then added: "Under current market conditions, tell the bank what your gross commissions are and the companies you represent and tell them to make you an offer. If they offer two times gross, sell. However, what if they would have offered three or four times gross just to enter the business?" Hey, I'm not above becoming a union person if my residuals keep my family in the style to which they've become accustomed! Speaking of residuals, you would think it would not be necessary to say but DON'T GET INTO BUSINESS WITH POOR FOLKS (Bad Credit). Probably one of the worst situations I have ever experienced was when I was in Baxley, Georgia where the owner, an elderly man, had to take over his agency again. He was never paid anything and now he was faced with trying to rebuild his agency files that had been taken from his office and put on microfiche. That should tell you how long ago it was. If you've never heard of "microfiche", ask Eddie ... he's been around that long too. *(He's right! Perry & Company Premium Finance was state-of-the-art with microfiche in the early 80's! - Eddie)*

I hope this helps some folks from making the same mistakes I have.

One of the good things about the insurance business is that most people want to talk about their successes and failures. It ain't all bad!

Ino Betternow is still in the insurance business (& doing better than ever!)

Should You Franchise?

What do McDonalds, Burger King, Ford, Chevrolet, Randstad, and many other highly successful independent businesses have in common?

The answer, of course is that they are all franchised companies. When people think of a "franchise," they typically think of such well-known establishments as "McDonalds." But, did you know that a new franchise opens 8 minutes of each business day in the United States, and that the success rate of a franchise is over triple that of a stand-alone business?

So, what does this mean to you, the struggling independent insurance agent in America? Well, to best address that question, you must consider the true value underlying a "franchise," and then we will look at the insurance business in particular. Belonging to a franchised entity does not necessarily mean that a parent company, i.e., the franchisor, is going to take you by the hand lead you down the golden road of success.

Rather, a franchise provides entrepreneurs with a proven formula for success in a certain business sector, which combined with other benefits associated with belonging to a much larger organization, increases your likelihood for success. These benefits are generally unattainable to the single entity, i.e., the potential "franchisee," due to sheer economies of scale or through exclusion due to copyrights, existing vendor contracts, etc., that precludes the single independent businessperson from offering comparable prices or services. This also means that the franchised store will be able to achieve higher profit margins due to increased buying power and economies of scale in advertising, etc., than a single entity. In simple terms, who gets better prices on beef -- McDonalds or Bubba's Beef Barn?

Of course, one must also consider name recognition and what that means to the individual franchise owner. In general, the average person will stop for a sandwich at McDonalds vs. Bubba's Beef Barn, because they know what to expect -- a Big Mac is the same quality (albeit questionable) and price, whether you are in Charlotte or Atlanta. Increased name recognition is achieved through cost sharing, thus allowing each individual store owner to benefit from a much greater advertising budget at a reduced cost per unit; thereby, effectively achieving "a bigger bang for the buck!"

In addition, with regard to marketing, the owner of a franchised store will also have access to prepared, highly professional advertising materials, which may have cost hundreds of thousands of dollars to design and produce, at a much lower cost per piece. Typically, this translates into projecting a higher quality image in the local marketplace utilizing proven marketing techniques and materials. While, on the other hand, the entrepreneur starting from scratch will endure numerous failures wasting both time and money.

The franchisor provides comprehensive training and ongoing support that further bolsters the franchisee's likelihood of success. The franchisee enjoys the tangible and emotional benefit of having a team of professionals dedicated to the success of their company if they should run into a problem that they may not be able to address on their own, or if they should require any fine-tuning to increase profits.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

This support team also instills in the customer' mind the image of a much larger and more professional organization, more apt to be able to handle any problems they may have in the future, as well as the idea of longevity eliminating their concern of what might happen if the individual store closed.

Due to the complexities of the insurance industry, the idea of franchising makes even more sense, delivering benefits that the stand-alone agent typically could never hope to attain, or at the very least, greatly reducing the necessary incubation period for a new agency to become profitable. So, let's look at the components necessary for the success of an independent property-casualty insurance agency in America.

1. Ability to offer good rates, i.e., represents competitive insurance markets.
2. Ability to maintain markets through good relationships with your carriers, i.e., not lose your markets and confuse your customers: loss ratios, volume, etc.
3. Marketing your products and services.
4. Thorough understanding of your markets and accompanying products.
5. Ability to increase market access in response to your customer's needs, as well as increase your competitive spectrum so that you may write a wider range of business.

In order to achieve all of the above listed components, you must be able to approach a given insurance carrier and convince them that you will be able to meet their volume requirements, while delivering acceptable loss ratios. As you well know, this is easier said than done. The challenges in doing so are numerous, including:

- (1) You are a brand new agency and cannot provide a history of loss ratios or past performance.
- (2) Your town is of too small population to be able to commit to the volume demands of multiple carriers, thus drastically reducing your competitive spectrum.
- (3) As a single entity, it is impossible to defray your loss ratios, so it's very possible you may lose a market and lose business.
- (4) Many times, you must already represent a preferred or standard carrier, before another one will give you a contract (Catch 22!)
- (5) In order to maintain your markets, you must funnel as much business as possible to your existing companies, so you are at a loss to recruit new contracts and may be driven out of business due to your inability to be competitive.

The Franchisor should be capable of overcoming these challenges, while providing a host of additional services designed to augment your income potential, fulfill your growth expectations, and accomplish your productivity goals as efficiently and effectively as possible. This allows you to focus on the really important things, like selling insurance! Typically, franchised agents find their businesses grow substantially more rapidly and profitably due to the extraordinary support and services found within those programs.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

What this means to the struggling independent agent is that instead of trying desperately to recruit competitive markets, (so that you will have a "product" to sell!), you will be immediately competitive with any agency in your marketplace, whether they are a larger agency or a direct writer! Furthermore, you will increase your ability to keep your markets, while the Franchisor continues to be your liaison with the top carriers to add additional markets to increase your competitiveness as well as introduce new products to augment your income potential. You will also qualify immediately for profit sharing and contingency bonuses without the accompanying volume requirements.

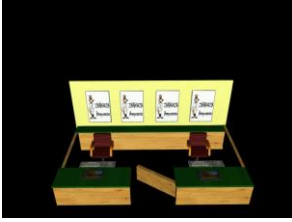
In addition to these absolutely necessary components, the Franchisor should enhance your agency's profits by providing:

- (1) Direct Company Appointments
- (2) Comprehensive Training
- (3) Ongoing Underwriting Assistance
- (4) Technical And Sales Support
- (5) Discounted Software Packages
- (6) Full Company and Procedure Textbooks and More.
- (7) 100% Business Ownership
- (8) Recognized Brand Name
- (9) Established Business Model
- (10) Access To Capital For Expansion & Acquisition
- (11) Competitive Products From Top Carriers
- (12) Location Selection/Facility Set-Up Assistance
- (13) Marketing Expertise & Co-Op Advertising
- (14) Web-Based Agency Management System
- (15) Administrative Support

Your Franchisor should also provide cooperative advertising and access to highly professional advertising collaterals, including: Brochures, direct mailers, quote requests, banners, Yellow Pages, and more!

Thus, a franchised agency will be able to project a top quality image in their local community at a much lower cost.

Franchise Example: Zaragoza Aseguranzas



Zaragoza Aseguranzas has a staff of bilinguals who sell insurance products to Hispanics seven days a week, especially on Saturdays and Sundays from self-contained kiosks in high-traffic Plazas. Utilizing the marvel of technology called the Internet; a complete, paperless office can be set up in as little as 100 square feet. Document storage can be offsite with electronic file retrieval at your fingertips. My “Oficina Principal” (Main Office) has three workstations in only 300 square feet at Grand Mercado in Norcross.

Computers at each of the kiosks can be taken over at remote locations with & without the knowledge of the employees. It enables management to constantly train newer employees and reduce errors at the same time!

This “Virtual Office” concept also enables individuals who wish to accomplish their own “el Sueño Americano” (The American Dream) of owning an insurance agency for little money investment.

Our business model incorporates 35 years of experience of selling and servicing similar insurance products under the trade name of Esquire Insurance Agencies (www.esquireinsurance.com). Esquire has perfected the profitable acquisition and processing of such business and enjoys an enviable reputation with the Georgia Department of Insurance and Insurance Industry at large.

Each of Zaragoza’s kiosks has professional signage saying “Asegurar el Sueño Americano”, which translates into “Insuring the American Dream”. This message is targeted at all passing potential customers who want to comply with Georgia laws and protect their assets. This unique selling proposition is self-targeting since only consumers who are recent immigrants to America and are seeking to achieve “el Sueño Americano” will believe this message is meaningful to them. The benefits of this message are relatively unique: “inexpensive insurance coverage plus service in their native language”. Informal, qualitative research reveals that the target market of weekend shoppers in Hispanic Plazas are accustomed to completing as much of their personal business as possible in such locations.

Although signage at Zaragoza kiosks emphasizes the benefits of mandatory auto liability, other insurance products such as homeowners, renters, motorcycle and commercial lines are also available. As an added attraction, each Zaragoza kiosk will boast of “Notario Público Gratis” or Free Notary Public.

Marketing Strategy

Zaragoza Aseguranzas was created to maximize the opportunities from the fastest growing segment of American society. Traditional customer acquisition and marketing for insurance agencies rely heavily upon radio, TV and Yellow Page advertising to bring potential customers to the agency. Zaragoza takes the agency to the people. Each kiosk, which costs about \$5,000 in start-up costs, is capable of producing 4 new policies per hour per employee.

Zaragoza Aseguranzas differentiates and positions its business from the very competitive insurance agencies with its products (low cost insurance for high risk applicants), its concern for compliance with Georgia law (Don’t Lose Your Driver’s License, Your Tag and Your Car!), and its service (7 days a week ... at the Oficina Principal (Main Office) during the week and at many of the Zaragoza kiosks on weekends).

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Zaragoza Aseguranzas insurance products are priced at the same premiums as competitors since rates are controlled by the Georgia Department of Insurance. Premium Enhancement Products (PEP) is added to each quote to guarantee profitable sales. Extensive promotional activity, including free informational flyers and seminars, help to ensure that Zaragoza customers perceive that they are receiving higher quality products and prompt, courteous service in exchange for the possible slightly higher premiums.

Customer loyalty is encouraged with development and promotion of new and revolving seasonal services each quarter. Zaragoza Associates’ training includes “M.O.P.F.I. (Make Other People Feel Important), a minimum of 40 hours of company training, mentoring, and apprentice management programs.

Advertising and Promotion



Traditional insurance industry advertising uses popular media, such as TV, radio, Yellow Pages and billboards to advertise. Zaragoza Aseguranzas does not need such media because it takes the agency to the people. Thousands of potential clients will pass in front of each kiosk every weekend. Advertising will be limited to colorful, attractive posters and flyers readily available

for free. Promotional items such as hand-held fans will be given out. Zaragoza Associates will be encouraged to allow removable vehicle “wraps” to be placed on their vehicles so they become “mini-billboards”.

Market and Distribution Situation

The company has a unique advantage in the insurance industry when compared to regular insurance agencies and similar kiosk operations. traditional advertising budget, indoor / outdoor mobility, efficiency in size, significantly lower overhead, shorter

training curves because of limited product lines, mandatory Premium Enhancement Products on each sale, and elimination of wasted space due to paperless environment provide an overall savings in basic operating costs estimated at 50% - 75% when compared to ordinary insurance agencies offering similar products.



No

"I WISH I HAD THOUGHT OF THAT" TIPS

Before the Sale:

Examine the profit & loss statement for the past 3 years: Is the agency growing, standing still or losing out? Average commissions? How much of the volume is direct bill? Agency bill? Placed with companies with a "shaky" future?

Camp out at the selling agency for a couple of days: Observe the current operation and procedures. Do you foresee a possible E&O? Sloppy file maintenance? Offensive customer relations that continue to erode the book of business you are contemplating purchasing?

Require the seller to inform the carriers in writing of the anticipated sale: They need to know sooner or later in order to decide whether to allow the renewal of policies and continued representation of their markets. Since one of the biggest parts of the value is based on continued carrier relationship, this is THE most important detail to remember!

Surprise, Surprise, Surprise! So that you won't later uncover any "surprises", check carefully for any E & O claim, a tax audit, and any balances or liabilities due companies and / or insureds.

Share your plans with your attorney and CPA: "A person that represents himself has a fool for a client!" Your attorney and CPA can warn you of possible tax and legal problems.

Determine each other's responsibilities as it pertains to accounts receivable, payable and any other liability.

COMMUNICATIONS WITH ALL PARTIES

EMPLOYEES of the buyer and seller should be involved in the planning of:

- (1) Accounting systems
- (2) Filing procedures
- (3) Department layout and duty assignment
- (4) Notification of clients

They should be clearly informed of their expected job functions and evaluated for their benefit package.

After the Sale:

POLICYHOLDERS should be informed of the changes in the best possible light. Send a letter explaining the benefits of remaining with a larger agency while reconfirming your commitment to excellent customer service. It would be best if the letter was a joint effort signed by both buyer and seller.

INSURANCE CARRIERS should have been pre-notified and have granted permission to continue being represented by the new ownership. If this is not possible, plans to transfer the business at renewal should already be in place and factored into the valuation of the agency.

GOVERNMENTAL AUTHORITIES should be informed by a joint letter so any questions and/or complaints will be handled by a more informed Department representative.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

ERRORS & OMISSIONS: Notify both the seller's and buyer's E & O carriers to provide coverage for any gaps created by the sale.

Pre-Acquisition Checklist

- (1) Establish business / personal goals & objectives
- (2) Decide how an acquisition fulfils goals
- (3) Evaluate business capabilities
- (4) Identify ideal acquisition candidate
- (5) Search and Screen
- (6) Develop “message” and solicitation format
- (7) Implement solicitation format with ideal candidates
- (8) Establish follow up procedures
- (9) Qualify candidate in physical meeting
- (10) Implement Confidentiality agreement, if appropriate
- (11) Collect information
- (12) Issue letter of intent, if appropriate
- (13) Collect Privacy Statement and related opt-out lists
- (14) Begin sample quote process to determine competitive position
- (15) Discuss the future roles of former owner
- (16) Review financing options
- (17) Draft purchase agreement

After the Sale

- (1) Create joint communication with seller to customers
- (2) Design communication to staff members
- (3) Provide training to current staff
- (4) Implement renewal review with current customers
- (5) Design customer acquisition material and appropriate mediums for new customers
- (6) Establish x-date procedure for acquired customers
- (7) Determine additional need for E&O
- (8) Install additional equipment and technology or prepare for relocation
- (9) Prepare official notice to carriers and make sure they reassign purchased business to the new entity

Need Capital to Grow?

For: years insurance agents had a limitation-not in their ability to dream, but in their ability to do... because of a lack of money. Any agent who has made a trip to the local bank can tell you that the bank doesn't think much of the business of insurance. They don't understand the insurance business. They want your agency's money flowing into their accounts and they are always greeting you with a smile, but a funny thing happens when you need serious capital. Suddenly, your renewals, the reason you got into the business, those wonderful receivables, don't seem to be considered an asset unless you combine them with something tangible. An agency that is producing millions in commission might be treated like a second-class citizen and denied the capital it needs.

Several years ago, Rick Dennen came up with a concept that was to change this. Rick knew the value of an insurance agent's block of business and realized that it was logical to believe that an agent's block of insurance business was as good as gold. Now he and Oak Street Funding are using an agent's block of business and agency as the collateral source for a commercial loan, something most banks are unable or unwilling to do.

Oak Street Funding does not require hard assets to back the loan like property or personal savings. They will (depending on the type of insurance within the block of business) loan somewhere between two and three times the renewal commissions. (These have to be commissions that you the agent are fully vested in and you must have a direct contract with the insurance company.) What could you do with this kind of money? Pay off debt, invest in technology, buy an agency or another agent's book, buy an office building, purchase leads, and so on.

Let's say you find an agency for sale. Oak Street Funding can use the renewal commissions from the agency that's for sale to provide you the agent with a loan to buy the agency. Oak Street Funding will do the valuation of the other agency for you at no additional cost. It will use the commissions needed to repay the loan from the book or books of business in that agency that collateralize the loan.

Oak Street Funding is a commercial finance company that makes loans against future commissions. It is their mission to provide capital to insurance professionals so they may grow their business and increase sales. The minimum loan is \$10,000, the maximum, \$5 million.

For more information, call Curt Vahle at 317-428-3806.

Uncle Sam can help with the Purchase

Let’s take a hypothetical situation:

A Good Insurance Agency has been in operation for many years and its 71 year-old owner wishes to retire. Gross Annual Sales for preceding 12 months are \$1,329,141 with \$168,904 in commissions. The commission percentage of 12.7% is low but has been adequate to support the owner’s lifestyle.

Using the Self-Evaluation Checklist in this booklet, the owner’s due diligence has found the agency’s insurance markets to be stable, loss ratios average 59.5% for auto, 52% for personal property and 43% for commercial lines for past 3 years. Premium growth has stagnated but renewal persistency is 90%. There are only 2 part-time CSRs and no agents with policy ownership issues.

The owner’s realistic self-evaluation pegs a value at 1.60% of annualized commissions (\$270,246.40). The owner sends out a proposal to several agency owners he has met through his agent’s association.

A local agent sees potential for growth in several key areas of the operation. It will take hard work and much planning but the rewards will be well worth it. The Potential Buyer discounts the asking price due to the stagnation in growth and makes an offer of 1.50% of annualized commissions (\$253,356.00).

After much negotiation, the owner of A Good Insurance Agency agrees to accept \$259,000 for the purchase of his agency with a 50% down payment at closing and a promissory note guaranteeing 5 years of monthly payments at \$2,751.00 (this includes 10% simple interest).

The Seller wins by getting close to the asking price. The Buyer wins by getting an asset with much potential for growth. Then they both win again with the help of Uncle Sam.

Seller Wins / Buyer Wins / IRS Loses!

The buyer’s CPA advised the following possible assessment or appraised values based upon the purchase price:

Real Estate Improvements	\$5,180	(2.0%)
Furniture, Fixtures & Equipment	\$25,900	(10.0%)
Expirations List	\$55,685	(21.5%)
Prospect List	\$55,685	(21.5%)
Good Will	\$55,685	(21.5%)
Non-Compete	\$55, 685	(21.5%)
Training	<u>\$5,180</u>	<u>(2.0%)</u>
Total	\$259,000	(100%)

The CPA recommended an aggressive cost recovery program that reduces taxable income and maximizes tax savings to 36%. A 5 year projection of only 3.5% income growth predicts an astounding return of 84.68% on the initial \$129,500 investment if agency is sold after 5 years.

THEFT OF ACCOUNTS: What to Do When a Producer Departs - with Your Accounts

What do you do if the employee joins another local agency and suddenly your agency is facing a spate of BOR (Broker of Record) letters, surprise non-renewals and clients who would no longer return your phone calls?

Obviously, the producer is soliciting. You can prove this because some of your clients who are also your friends tip you off to their solicitation by the producer with exceptional knowledge of their accounts. Obviously, the producer has stolen agency information to prepare him for the theft of agency clients.

In this scenario we advise the agent to take the following steps:

1. Write a personal letter to all of the clients generated or serviced by the producer advising them of his departure and that the agent (or a representative) will visit them soon to assure continuity of coverage and service. Note that persistency with a carrier will assure the best treatment on renewal or in the event of a loss.
2. Send a Newsletter or Bulletin to all other clients with a few articles of general interest and a notice that the producer has left, wishing him well, and naming the successor producer and/or services that are available to meet any insurance needs.
3. Working with his attorney, get restraining orders on both the producer and the agency specifying the offenses that have been committed and offering to avoid prosecution if they a) return the accounts that have been lost to them, and b) avoid any further solicitation of any accounts covered by the contract.
4. If the solicitation continues, SUE THE BASTARDS! In the old West, when someone took your cattle, you first asked for them back (in case the herds just got mixed up). If they proved their criminal intent by denying or continuing the wrongdoing, they were prosecuted and hung!

WHAT ARE THE DAMAGES?

Too many contracts do not specify the damages done or the values of those damages.

Those contracts that do specify the levels of damages are rarely broken.

Level One Damages - the revenue value of the lost accounts. The lost accounts will accumulate lost commissions for every year they would have stayed in the agency. Each agency has two types of business, that of average duration and that of extended life.

If you randomly sample your dead files you will identify the average life of accounts that have died (initial inception date to termination date) and, with enough in the sample, could determine the average life of accounts by type. Measure the life to termination of the accounts lost to the departed producer to determine if they fall into the average category and calculate the remaining revenue value to each policy/account. If an account has been with the agency more than double the average life, it is an extended life account and should be valued as if its life to the point of theft was its “half-life”.

Level Two Damages - Asset value decline to the agency. If your agency is worth \$X intact including the book of business and growth generated from that book in the future, how much less is it worth without that book of business? Agency Consulting Group, Inc. or other agency valuers can determine the value of your agency with and without the stolen business to add that measure of damages.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Level Three Damages - If a stolen book of business has proven to be a generator of referrals, the value of the expected referral accounts over their lifetime is another measure of damages.

The best contracts will spell out the damage calculations in the event of a theft of accounts. Once this form of contract is accepted and signed, there is little chance of a producer breaking the non-compete or non-piracy clauses upon his termination.

Please make no bones about it. The primary value of an insurance agency is in its book of business. The greater the retention and growth of the accounts, the more the agency is worth. The solicitation of an agency’s accounts represents THEFT, pure and simple. This theft is worse than the burglary of jewelry from your home. In the case of jewelry, you have lost the value of the pieces once (and any emotional attachment you may have had to them). In the theft of accounts, you lose the revenue value of the accounts EVERY YEAR. Offering to “sell” the stolen accounts to the thief makes as much sense as telling the burglar that you’ll forget about the theft if he will compensate you for the lost jewelry.

Adapted from THEFT OF ACCOUNTS: What to Do When A Producer Departs - With Your Accounts by Al Diamond (www.agencyconsulting.com)

Noncompete-Speak Definitions

Here are some of the most common legal terms associated with noncompete agreements:

Noncompete Agreement: A noncompete attempts to restrict, for a length of time, an employee's ability to leave your employment to work for a competitor, steal your clients, or set up a competing business. You can't completely prevent employees from defecting to - or becoming - the enemy, but you can make them wait for the privilege.

Nonsolicitation Agreement: A close relative of the noncompete, this document restricts an employee's ability to pilfer clients or lure away coworkers.

Trade Secrets: This term refers to confidential - especially technical - business information. Trade secrets can also include an agency's future plans, management, or pricing plans. Customer lists are not automatically covered, but the more proprietary information they contain (for example, contact names, price quotes, expiration dates), the more likely it is that you'll be able to protect them.

Nondisclosure Agreement: This document specifies that your employees will not use your “trade secrets” to benefit anyone but you.

Duty of Loyalty: Even without any signed agreement, the law prohibits employees from certain activities while still on your payroll. The law varies from state to state, but forbidden activities can include running a competing agency, working for the competition, misappropriating confidential information, soliciting your customers, and recruiting your employees to join a competing firm. Your employees generally can, however, announce their venture publicly (in some states, even using your customer list), lease office space for a new business, and form a corporation.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Points to Ponder:

Even if you don't use noncompetes, consider having new hires sign a statement declaring that they are not under a conflicting noncompete clause with another company. If you find out differently, treat the matter very seriously.

If you want the courts to agree that certain information is a trade secret, you have to treat it as such in your agency. Keep confidential information in a secure place and give employees access to it only on a need-to-know basis. Remind departing employees what information is classified and what they must physically and psychically leave behind.

Keep the terms of agreement limited and precise. Remember this: the more restrictive the agreement, the harder it normally is to enforce.

Breaking Up Is Hard To Do!

Education is what you get by reading the fine print.

Experience is what you get by not reading the fine print.

Contracts and Agreements aren't for just getting into a deal: They're also for getting out!

Most people seem not to be concerned about contract terms going into a deal but when it's time to get out, every word and punctuation mark becomes important ... Evans Credo, Commandments and Comments #3 by Farris Evans, Sr. of The EBCO Group.

One of the FYI's most avid readers recently received the following dreaded “Termination Letter”:

A recent review of our records indicates a continued high loss ratio. Your year end loss ratio for 2000 was 136% based on a total earned premium of \$6,915 with an in force policy count of 6 policies. We regret the necessity of terminating any agency agreement, but it is not feasible for us to remain contracted with agencies maintaining a continued unprofitable loss ratio.

Please do not submit any new business to our company and verify that all company supplies in your office have been destroyed or returned to us by June 14, 2001.

Enclosed is a computer produced listing of policies currently assigned to your agency. Please take the necessary steps to place these risks with another company as soon as possible. In the event any of these policies remain in force after June 14, 2001, nonrenewal notices will be issued to all active policyholders.

My first thoughts were “If the agency's contract is being terminated for high loss ratio, why terminate the contract? Georgia has a funky law which requires carriers, if requested to do so by the policyholder, to renew policies being set up for nonrenewal if the reason is simply that the agency no longer represents company.

Why not simply suspend new business and allow the existing policies to renew?

What gives a company the right to terminate an agency contract?

I got out my copy of that same carrier's agency agreement and started reading the fine print. The more I read the more I realized how little I truly understood about Agency / Company Contracts. So I finally asked company reps across the nation the same questions.

Agency / Company Contracts

I got so much into it that I starting reviewing the other clauses. My findings may surprise some of FYI’s readers. A Contract is an essential element is most transactions in the Independent Insurance System. It is simply an agreement between two or more parties in which each party promises to do something in exchange for the other party’s promise. For example, an insurance agent promises to sell insurance policies for an insurance company, which promises to pay the agent a commission for each policy sold. Or an insurance agent promises to obtain insurance coverages for a customer, who promises to pay a premium to an insurance company, from which the agent receives the commission pursuant to the first example.

Contracts can be written or oral. Both are enforceable in court although most oral contracts are not worth the paper they are written on! If a field rep ever tells you that their company would never do something regardless to how it reads in your Agency Agreement, ask them to note that on the contract so that both of you may initial it.

Agency Agreements are meant to be contracts of adhesion, just like insurance policies, because one party does not have the opportunity to negotiate the terms of the contract. In other words, the insurance company makes a “take it or leave it” offer. All Agency Agreements should be carefully reviewed and understood before signing because once signed, it becomes binding on both parties. The adhesion nature of the agreement only means that where there are ambiguous terms they will be interpreted against the preparer of the contract; normally that’s the insurance company / General Agent.

By the way, Agency Agreements aren’t the only contracts that an insurance agency usually has in their operation.

There are leases for the office space, leases for office equipment, employment contracts with staff, and advertising contracts with Yellow Page directories.

If the agency is operated through a corporation, there are shareholders’ agreements and noncompete agreements. All involve money and all are important.

All should be in writing. Promises can be forgotten and memory seems to be more selective depending upon the situation. When the promise is in writing, the problem is eliminated or reduced to legal interpretation.

Now is a good time to update your Agency / Company files. I plan to do so with each of my carriers ... someday ... when I get a few extra moments ... I promise.

Most industry gurus will tell you that in Georgia the agent unquestionably owns the book of business ... until the contract is terminated. Then Georgia law requires the carrier to issue non-renewal notices to auto & personal property risks which include the message that, if the policyholder so chooses, the policy may be renewed with another agent of the carrier.

This law went into effect in 1989 as a result of Warren Evans’ ill-fated reelection attempt of being known as “Consumer-friendly”. It makes auto & personal property policies in Georgia “noncancelable” except in certain cases.

What few people realized was that it also gave unscrupulous carriers with the ability to deal directly with policyholders a legal loophole to steal a book of business away from the original agent without any mandatory compensation procedures.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

I’ve always considered the agency / company relationship to be like a marriage and the policyholders to be the “children borne of the marriage”. Both parents should have certain undeniable rights to their children.

I went into my dungeon and dug out contracts from the following companies. I couldn’t immediately put my hands on the contracts of the rest of my carriers but have no fear ... they’re in there ... somewhere.

Many of the following contracts may have been updated for new producers but they are the ones I’ve had going back to 1985. During the research for this article, one of my carriers and I discovered the contract we had in common was from 1987 and didn’t address the Upload, Sweep & Retention of Original Signatures provision! (But then again, many of them do not).

It became quickly apparent that Insurance Carrier Contracts are like snowflakes ... no two are identical!

I found it easier to compare each of the contracts by sorting various contract provisions into the following general categories and examining them throughout this issue:

GENERAL DEFINITIONS

OWNERSHIP

SELLING / ASSIGNING CONTRACT

& POLICYHOLDERS

LIMITED BINDING AUTHORITY

SUBAGENT

ADVERTISING

COMMISSIONS

BILLING

PREMIUM TRUST ACCOUNT

E&O

ELECTRONIC TRANSMISSION

ELECTRONIC FUNDS TRANSFER

INDEMNIFICATION

PERSONAL GUARANTEE

TERMINATION

AUTOMATIC TERMINATION

ARBITRATION

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

As it turned out, not all contracts addressed all of the categories. I’m not a legal eagle but I’m told that if a contract is silent or ambiguous on a matter, the interpretation goes against the preparer of the document. Then it’s up to twelve of your peers to get together in a room to decide which side has the best lawyer!

I’ve reproduced (verbatim in most cases) clauses from different contracts which seem to address the same issue. If you want to know which contracts they come from, you have to do what I did ... dig them out & read them!

I also took the liberty to sprinkle my own simplified interpretation of each topic. They appear in italics throughout the topics in this issue.

Rather than commenting on the various issues raised in the many of the following clauses, I’ll just underline in bold print the sections of most significance. Draw your own conclusions.

Remember ... Education is what you get by reading the fine print.

Experience is what you get by not reading the fine print.

GENERAL DEFINITIONS

“Renewal” means any contract of insurance issued by us, or any of our corporate affiliates, that:

1. is effective within 60 days after the expiration date of any Policy or Renewal thereof;
2. provides substantially similar coverage as any such Policy or Renewal;
3. Is issued to the same named insured as such Policy or renewal; and
4. Is issued using your Expiration Information.

Only 1 Company specifically addresses this. It seems to say if a policyholder contacts the company directly after 60 days of expiration, the company owns the business.

“Expiration Information” means business records and information originating with you regarding any applicant or insured under a Policy or Renewal, including the name and address of the applicant or insured, and the date of expiration and policy rights of any Policy or Renewal.

Agency owns all rights in expiration Information except if Agency Agreement is terminated by Company due to Agency’s failure to pay all amounts due and owing Company, the Company owns all rights in Expiration Information.

The use and control of your expirations, including direct billed business, your records and work product, will remain in your undisputed possession and exclusive ownership.

We will not use our records of your expirations or submissions in any marketing method for the sale, service, or renewal of any form of insurance coverage, or other product, which would abridge your rights of ownership, use and control, unless you authorize us to do so in writing.

Older contracts never anticipated the day when carriers would compete (or have the ability to compete) with their own agents. There’s a question of ethics when a carrier uses the information in their database to solicit former policyholders.

.....

Agent” and “Agency” are used synonymously throughout most Agency Agreements. In reality, however, Agent is a real person who passed the 40 hour Licensing Course and State Exam (on the first try if taught by R.S. Thomas Training Associates ... free plug, Ron!) and is appointed directly by the insurance company. Agency is the sales environment such as an office or, in many cases, a corporation.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

“Subagent” is an Agent who is appointed by the Agent of the carrier rather than being appointed directly by the insurance company. Many companies only appoint one Agent per office and expect that Agent to appoint the other Agents in the office as “Subagents”. Some insurance companies appoint the General Agent as “Agent” who in turn appoints subagents in each agency, usually the agency principal (assuming their license hasn’t been suspended!)

“Limited Subagent” is an individual who attended the mandatory 20 hour class which doesn’t require the passing of an exam and is licensed under the supervision and responsibility of an agent. This is the license formerly known as “Solicitor”.

.....

Your policy expirations and related policyholder records become the property of company if agency does not properly pay premiums or other indebtedness to company.

Company may use reasonable business judgment in selling or otherwise transferring your rights to policies. Agency will be paid any amount, net of all expenses incurred, which exceeds the premiums or indebtedness owed. If company does not recover enough to offset all amounts owed, agency is still responsible for any unpaid amounts.

.....

After a final accounting and settling same with the Company for all business transacted through the date of termination, Agent is entitled to ownership, use and control of the expirations as long as the Agent continues to service the policyholder until expiration, cancellation or nonrenewal of the policy; and refrains from making general or indiscriminate cancellations and / or replacement of the policies with those of another company except as written instructions to do so may be given by the Company.

If Agent refuses to pay any and all balances as they become due the Company, as shown by the records of the Company, absolute title to and exclusive ownership, use and control of the business belongs to the Company. The Company may sell the policy information and expirations for cash or other negotiated terms. Agent is still responsible for any balances.

Any net amount realized by Company in excess of indebtedness, less expense of disposing of such records and expirations shall be returned to the Agent if realized by Company within 12 months of the termination or expiration of this Agreement.

In the event this agreement is terminated and a public authority has revoked your license, we shall appoint another agent to take your place to service policies you have written under this agreement.

.....

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

You have the right to expirations unless you are in default on the payment of any amounts due and owing us. If you are in default, we will provide you with written notice of the amount that is due and owing us. If that amount is not paid within 15 days, the right to all expirations shall be ours.

In the event of default of this agreement by the Agent, the Agent forfeits any and all current or future rights to commission, income, policy renewals, policy expiration data, customer information or other data or information generated or maintained by the Agent and hereby agrees that Company may take immediate possession of all of the above property, records and information.

In the event it is necessary for agent / Company to cancel this agreement, or directly service subagent’s business written through agent / Company, the subagent relinquishes all rights or claims to subsequent renewals, additional premiums, or commission thereon, insofar as they may be necessary to satisfy the interest of agent / Company.

It ain’t yours unless you pay for it! ‘Nuff said?

SELL / ASSIGN CONTRACT / POLICYHOLDERS

This agreement will also terminate automatically upon sale of your business, consolidation with a successor firm, or change of principal, unless we consent to substitute the purchaser, successor firm or new principal.

The sale or transfer of Undersigned’s business without prior written consent of the Company shall result in the immediate termination of this Agreement and all authority hereunder.

This agreement is not transferable or assignable by either party without the prior written consent of the other party.

In the event of sale or change of ownership a new agreement must be executed. Also, the parties to this agreement will be bound by its provisions until any balances due either party are satisfied. Such balances are not transferable to entities or individuals not party to this agreement.

Upon written notice to Company, you may assign your rights to receive commissions to any insurance agent, and upon receipt of such notice Company will pay such commissions to the assignee, provided such insurance agent is properly licensed, Agency has paid all amounts that are due and owing to Company, and Agency is the agent of record at the inception of the Policy or Renewal.

LIMITED BINDING AUTHORITY

Producer / Subagent have no authority to bind risks or coverage changes nor issue binders, policies, endorsements, certificates or cancellation notices.

It is understood that the Producer / Subagent is an agent and / or representative of the insured and not of the General Agent / Agent or any insurance company or insurers represented by the General Agent / Agent.

.....
Pursuant to O.C.G.A. §33-23-28(b), subagent shall have no binding authority on business transacted through agent / Company, or any insurance carrier represented by agent / Company, nor does subagent have the authority to countersign policies, binders, certificates of insurance or any other insurance documents on behalf of agent / Company or any insurer represented by agent / Company unless expressly qualified and agreed in writing and signed by all require parties.
.....

In the event of termination of this agreement, the Producer shall have no authority to produce new business or bind the Company in any respect, except that the Producer shall continue to serve outstanding policies for the period of six months.
.....

Subject to underwriting standards and rules which may be changed at any time.

Company reserves the right to limit Agency’s authority to specific coverages or to restrict any or all of Agency’s authority but the exercise of that right shall not cancel the agreement nor relieve Agency of any of its obligations and duties to Company.
.....

In the event Company should not insist upon strict compliance with any of the terms of this agreement or any provisions contained in Company underwriting guidelines, such failure shall not constitute a waiver or relinquishment on Company’s part to insist upon such compliance at any other time or times.

Just because we got away with it in the past doesn’t mean it can’t be enforced in the future!

ADVERTISING

The Agent will not use any service mark or trade name of the Company, or any of its affiliates or subsidiaries, on any signs, letterhead, business cards or in any form of advertising including, but not limited to, newspaper advertisements, radio and television commercials, white or yellow pages listings, and all solicitation letters and materials, without the written approval of the Company.
.....

All advertising, oral or written, containing the name of the Company and intended for publication or use by the Agent shall first be approved in writing by the Company.
.....

No advertisement using service marks without written authorization.

I notice many agencies use the logo of companies in their Yellow Page ads. I wonder how many have written authorization. I did read last year where Progressive reminded agents not to include their logo in ads which proclaim “Low Down Payment”, “No One Refused”; “SR-22 & SR-22A”-type messages. Apparently some agents don’t read their company memos as well as their contracts.
.....

SUBAGENT

Unless Company specifically agrees with Agency in writing to the contrary, Agency may not permit a broker, solicitor or subagent to bind Company on a risk.

.....

Producer agrees that in the event that any subagent, as that term is defined under the provisions of O.C.G.A. § 33-23-1(9), is appointed by Producer to act on its behalf in the solicitation of, negotiation for or procurement or making of any insurance contract pursuant to this Agreement, that said subagent shall first be duly licensed in the State of Georgia ... and shall adhere and comply with all laws, statutes, regulations and directives ... which regulate such subagents.

Producer further understands and agrees that any subagent that it appoints to act on its behalf shall not have any power or authority to bind the Company with respect to any insurance contract...

Producer understands and agrees that any subagent it appoints acts as its producer or employee and not as an agent or employee of the Company. Further, Producer understands and agrees that it will be responsible for all acts or omissions of any subagent it appoints and agrees to indemnify and hold the Company and its employees harmless from any and all losses, damages, judgments, costs, claims, demands or other expenses of any kind, including, but not limited to, attorney’s fees and costs of investigation.

In the event that Producer appoints any subagent to perform any act authorized pursuant to this Agreement ... that such subagent shall agree to maintain Errors and Omissions insurance ... in an amount no less than those required of the Producer by the Company.

The dollar amount required was not specified in the Agreement.

.....

The Undersigned has authority under this Agreement to appoint subagents or limited subagents without prior approval of the Company.

Subagent(s) or Limited Subagent(s) cannot bind or receive monies and are subject to other laws specified by the State of Georgia.

.....

The Agent may not designate or appoint any sub-producer and none of the Agent’s rights and obligations under this Agreement may be assigned or granted to any sub-producer, without the express prior written approval of the Company. All activities to be performed by the Agent under this Agreement shall be performed by employees of the Agent who are properly appointed and licensed with the Company.

.....

FYI: O.C.G.A. § § 33-23-28. (a) A subagent's certificate of authority shall not cover any kind of insurance for which the agent is not then licensed.

(b) A subagent shall not have power to bind an insurer or to countersign policies.

COMMISSIONS

Commissions may be changed by written notice. At least 180 days notice whenever a reduction in commission is involved. Once established, commission rates will remain in effect for at least a six month period.

.....
The Company may change the commission level of any line of business included on the Commission Schedule or may otherwise revise the Commission Schedule upon providing thirty (30) days written notice to the Agent.
.....

Commissions will be refunded at the same rate paid on canceled policies and reductions in premium.

Agency will cooperate and assist in any collection effort even though rights to commission due is waived once premium collection is referred to a collection agency or any collection unit of company.

Requiring an agent to assist in collection efforts without compensation is like putting gas in another person’s car!

.....
No reduction in any rate of commission as specified on the Commission schedule shall be effective until the Company has given the Agent at least ninety (90) days notice of any proposed reduction in such rate of commission.
.....

The Company shall grant a renewal for one six (6) month term, or such longer period of time as may otherwise be required by law. Where required by state law or in instances designated by the Company that renewals will be granted after the one six (6) month term referenced above, the Company will pay the Agent a service fee of 3½ percent of net written premium instead of the commissions set forth on the Commission Schedule.

.....
Except with respect to a change in any rate of commission, this Agreement may be amended or revised only in writing by mutual agreement between the Agent and the Company.
.....

Commission rates as referred to in attached Commission schedule may be changed by the Company upon giving notice in writing to the Agent, and such change shall apply to business thereafter produced or renewed.

We reserve the right to unilaterally change our commission schedule at any time during the term of this agreement.

If, upon expiration, you do not pay us all amounts that are due and owing, we may continue to offer renewals to existing policyholders, and our obligation to pay you commissions shall cease.

.....
General Agent / Agent will allow Producer / Subagent commissions at such rates as are agreed from time to time.

The contract doesn’t address what happens if the Agency doesn’t agree but I suspect the following paragraph from the same Producer / Subagent Agreement would occur...

This agreement may be terminated by either party upon written notice to the other.

Nor does the agreement address what happens to renewal commissions after termination.

.....
We will notify you 90 days in advance of any change in the Commission Schedule unless a longer period is provided by law.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Our obligation to pay commissions ceases upon termination of this agreement unless a longer period is provided by law.

The commissions specified in Schedule “A” shall not apply to the renewal of an insurance contract which Company desires to cancel but is required to renew by law unless Company failed to comply with procedures that would have permitted non-renewal of the contract.

During the term of this Agreement, the commission rates specified in Schedule “A” shall remain continuously in effect, unless revised. The schedule may be revised by Company without the Agent’s consent only after it gives the Agent at least 30 days advance notice.

The terms of this Agreement shall not prohibit the negotiation of special commission rates on individual policies by mutual agreement of the Agent and Company in writing.

All agencies are created equal... some are just a little more equal than others!

Policies financed through premium finance companies other than those affiliated with either agent / Company or the particular writing insurance company may result in reduction of normal commission to agent.

In the event it is necessary for the Company to terminate this Agreement for violation of insurance laws or regulations of the State of Georgia or of this Agreement, or breach of fiduciary nature by the Producer, the Producer relinquishes all rights of claims to subsequent renewals, additional premiums and commission thereon, insofar as they may be necessary to satisfy the interest of the Company.

Upon expiration of six months from the date of termination of the Agreement, the Producer’s commission allowed while this Agreement was in full shall be reduced by 50%.

BILLING

The above named Producer shall be responsible for payment of all earned premiums whether or not the producer has collected the same from the insured.

If you agreed to this provision, you might be guilty of rebating.

No policy, binder or cover note will be canceled flat.

In direct violation of O.C.G.A. §33-34-3. (a)(4)(B)? “May” is the optimum word. Read on...

In the event that a check, money order or other instrument of payment is made payable to Producer / Agency, such instrument shall be properly endorsed and immediately forwarded to Company.

Issuance of any check or draft by Producer / Agency which is returned by the bank upon which it is drawn shall be grounds for termination of this Agreement.

In March, 2001, one of Georgia’s carriers issued an important announcement:

We have previously advised that any checks collected from an insured should be made out to [Company] or endorsed over to our company then submitted.

However, we continue to receive checks issued by agents and then are asked to react when an insured’s check is returned to the agency with insufficient funds. This is an increasing problem that we are looking to address in an effort to keep expenses to a minimum and reduce paperwork for both your agency and ourselves.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Effective immediately, the agent will assume responsibility for any returned checks from the insured. We will no longer:

- (1) Reverse payment off a policy
- (2) Issue a non-payment cancel notice to the insured
- (3) Reimburse bank fees for agent issued checks received through the mail at our Specialty Auto Business Center.
- (4) (This does not affect the Upload Procedures in place for New Business down payments and installments).

O.C.G.A. § 33-34-3. (a)(4)(B) reads: If an insurer, agent, or premium finance company collects such advance payment in the form of a check or money order which is not honored upon initial presentation, such insurer, agent, or premium finance company shall be deemed to have complied with subparagraph (a) of this paragraph and may, thereafter, cancel for nonpayment of premium as provided in Code 33-24-44.

O.C.G.A. § 33-24-44(d.1) reads: The notice requirements of this Code shall not apply in any case where a binder or contract of insurance is void ab initio for failure of consideration.

In plain English, a policy may legally be flat canceled if a policyholder bounces a down payment check payable to the agent. Most companies flat cancel if the NSF down payment check is payable to the carrier or is deposited in the agent’s account and uploaded.

E&O

The Agent agrees to maintain in force an agent’s policy of errors and omissions insurance with an aggregate limit of liability of \$500,000 insurance Agent and Agent’s employees.

.....
The agent agrees to obtain and maintain during the term of this Agreement and for two years after its termination, at the Agent’s sole expense, professional liability insurance (Agents Errors and Omissions Coverage). Such insurance must be adequate to protect against all expenses, claims, actions, liabilities, and losses related to the subjects covered by the required policies with limits of at least \$1,000,000 per claim with a retroactive date on or before the effective date of this Agreement.
.....

Agency shall maintain errors and omissions in such amounts as Company shall reasonably require, from time to time, which coverage shall not be less than three hundred thousand and 00/100 Dollars (\$300,000.00) coverage per occurrence, which will be underwritten by insurers satisfactory to Company. The errors and omissions insurance shall provide that Company shall receive notice within thirty (30) days in the event of cancellation. Agency shall immediately send to Company a copy of any change in the coverage.

.....
Producer agrees to maintain an insurance policy for errors and omissions insuring against any acts or omissions of Producer. Attached hereto and incorporated herein by reference is a Certificate of Insurance issued to Company expressly giving Company advance notice of cancellation of the policy. Producer expressly agrees and understands that in the event of cancellation of this policy or the failure of Producer to give Company evidence of renewal of this policy prior to the expiration date, the Producer Agreement shall be canceled without notice to Producer. Producer agrees to save and hold harmless Company and any insurance carrier represented by Company, from any errors, acts, or omissions of producer, his employees, agents or subagents.
.....

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Subagent agrees to maintain an insurance policy for errors and omissions with a minimum limit of \$100,000.

If a subagent has no authority to bind, wouldn't every piece of business be subject to an error or omission?

.....

Let's see if I have this straight. To cover all of the bases:

E&O is required in the limits of somewhere between \$100,000 and \$1,000,000; and

Some carriers require a Certificate of Insurance and notification from the E&O carrier; and

Agency must continue to carry the E&O for two years after termination; and

Failure to produce the required E&O is grounds for immediate termination?

ELECTRONIC TRANSMISSION

Agent shall forward to Company copies of all applications, together with any supporting documentation thereto, in such a manner as Company may reasonably request, including, without limitation, via electronic transmission. In the event Company requires Agent to provide applications and supporting documents via electronic transmission, Agent shall retain all original signed applications (including applications for which coverage was rejected); exclusions, proof of insurance, rejections or optional coverage under said policy, and other supporting documents, in an organized and accurate file system.

Records containing such documents shall be retained by Agent for a period of at least five (5) years from the expiration date of the policy (or the date the policy was rejected). After such period of time, or upon expiration or sooner termination of this Agreement, Agent shall send to Company all such documents or accurate copies thereof.

What happens if the original signatures get lost?

The Agent shall indemnify and hold harmless the Company against any liabilities the Company may incur as a result of any act of the Agent..

The only reason original signatures become important is when a lawsuit is filed due to a claim. If the agent can't produce the signatures, the company is placed in a less defensible position. It's easily foreseeable the carrier will hold the agent responsible for them having to pay a claim they wouldn't have if agency hadn't lost the paperwork.

Is it covered under your E&O? Good question! I suggest you read the fine print before it happens.

Agency will forward all applications and premiums to Company in any reasonable manner that Company may specify, which may include, without limitation, electronic transmission.

If electronic transmission is specified, Agency will retain in an orderly fashion, and for the period specified in the Underwriting Requirements, all original signed applications, and exclusions and rejections of optional coverage under any Policy or Renewal, and not discard or destroy any such documents without our prior written consent. Notwithstanding the foregoing, after any such document has been retained by Agency for a period of at least three years, you may send it, or an accurate copy thereof, to Company, and upon expiration or termination of this Agreement, Agency will send to Company all such documents, or accurate copies thereof.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Just so you know ... O.C.G.A. 33-23-34. (3)(b) states "All records as to any particular transaction shall be kept for a term of five years beginning immediately after the completion of the transaction or the term of the contract, whichever is greater, provided that records of losses adjusted by an independent adjuster may be kept at the office of the insurer for whom the adjuster acted." Effective on policies effective on or after July 1, 1992. Prior to that date, the period of time was three years.

It is understood and agreed that the Producer shall advise the Applicant that the Application shall be attached to and form a part of the policy. It is also understood and Agreed that the Producer shall perform the following Mandatory requirements:

(1) Electronic Applications: Producer must provide the Applicant with a copy of the completed Application attached to a policy jacket, in addition to declarations, Endorsements, Exclusions and ID cards, prior to the Applicant's departure from the Producer's office.

It won't be long before the only task not transferred to the Agency will be claims handling!

The Producer's copies of all policies, correspondence and underwriting data relating to coverages issued or declined pursuant to this Agreement are permanent records to be maintained on behalf of the Company for the minimum period required by the governing statute.

Don't misunderstand my observations on the latest advancements in the transference of tasks to the producer's desktop. I think it is most beneficial to carriers, agents and clients. But now we have a new development in the ownership of the business.

More and more agencies are becoming reliant on the carrier's website, accessing the "real-time" information rather than storing it on an agency management system. Agencies have to use a password to access this information.

What happens if the agency – carrier relationship is terminated? How many of your carriers explicitly grant the agency continuing rights to access the information after the breakup? Are you sure? Scan your agency – company agreements for a clause that reads something like: "We reserve the right to modify, limit, or eliminate your access to our website and any or all website features at any time, for any reason."

PREMIUM TRUST ACCOUNT

The Company shall have the right to require the Agent to deposit all premiums received by the Agent on the Company's behalf in a premium fund trust account, whether required or permitted by state law or not.

O.C.G.A. 33-23-35.(b) states "All funds representing premiums received or return premiums due the insured by any agent or subagent shall be accounted for in the licensee's fiduciary capacity, shall not be commingled with the licensee's personal funds, and shall be promptly accounted for and paid to the insurer, insured, or agent as entitled to such funds. Nothing contained in this Code section shall be deemed to require any agent or subagent to maintain a separate bank deposit for the funds of each principal, if the funds so held for each principal are reasonably ascertainable from the books of accounts and records of the agent or subagent."

I once asked Mary Ann Wargula of DOI Agents Licensing "Does this mean the rumor that funds HAD to be kept separate is not true?"

Her response was "Yes, but many agents prefer to have separate bank accounts."

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

.....
Nothing herein contained shall be deemed to require the Agent to maintain a separate bank account for the premiums of Company, as long as the premiums of Company held in trust by the Agent are ascertainable from the books of accounts and records of the Agent.
.....

ELECTRONIC FUNDS TRANSFER

Completing this form allows collection of payments electronically from a bank account designated by your agency. You may establish a new account solely for the premium collection or use an existing escrow or premium trust fund account. Premium funds may not be commingled with your agency’s operating account.

EFTs allows credit and debit transfers. Is there any reason only net withdrawals can’t be done? Why can’t Agent’s Commission be left in the account?

By the same token, why can’t daily deposits of renewal commissions be made instead of waiting on the monthly statement? Doesn’t the road go both ways?

.....
Issuance of any check or draft by Producer / Agency which is returned by the bank upon which it is drawn shall be grounds for termination of this Agreement.

If the funds deposited in an EFT account are made up solely of checks from applicants, what happens when (not if) one or more of their checks are charged back against the Agent’s bank account for NSF or stop payment? Wouldn’t that cause the Agency account to bounce EFTs in turn?

It is not fair to force an agent to keep a surplus of their hard-earned money in an account just to cover this very likely event and keep a Company from terminating their Agreement.

.....
Agency can process payments on a policy that is canceled with earned premium due but has not yet been transferred to the Company Special collections Department. The sweep payment will be applied to the earned premium balance due. Coverage will not be reinstated due to receipt of the payment.

Can you see it now? Policyholder brings payment to agency that obligingly uploads it to company who happily applies it to an outstanding balance but refuses to reinstate.

At best, you have a very unhappy person breathing down your neck.

At worst, you have a claimant who takes everyone to court!

INDEMNIFICATION

Company indemnifies and holds agency harmless against all civil and administrative liability, including reasonable attorney’s fees and reasonable costs of investigation and defense, arising as a direct result of company’s E&O, except to the extent that agency caused, contributed to, or compounded such error.

Agency is to give company written notice as soon as notice of any E&O action is received. Failure to promptly notify company relieves company of indemnification obligations and will not be liable to agency for any legal or other expenses incurred by agency in connection with such action.
.....

PERSONAL GUARANTEE

Stockholders and Officers of an incorporated agency appointed to represent a company are required to sign a personal guarantee to reimburse the Company for all unearned commissions or any loss or expense which the Company may incur by reason of any failure by the Agency to make such payments.

.....

As an inducement to agent / Company to grant subagent a certificate of authority through which subagent can place insurance policies, from which subagent will personally benefit, subagent personally guarantees the performance of all obligations pursuant to this Subagent Agreement and further warrants and represents that in the event of failure of subagent to perform the conditions of this agreement, that subagent shall be personally liable to agent / Company or the insurers represented by agent / Company for any and all acts, errors and omissions under this agreement.

And you thought the “corporate veil” had your personal fortune protected?

.....

TERMINATION

Termination Reasons from Company Reps

A company may decide to terminate an agency contract because the company wants to reduce representation in a particular area.

The company may have a poor business relationship with an agency due to the agency being uncooperative, submitting poor quality business, being unresponsive, etc.

The agency may have a poor financial picture.

Few companies can be specific about the expenses they incur when undertaking termination and non-renewal versus the expenses "savings" by moving an agency off the books.

.....

This Agreement shall terminate immediately for cause in the event that if Agent directly or indirectly sells all or any portion of its Company related expirations, data, or files to any person or entity which Company in its sole discretion deems to be a competitor of Company and Company may, at its option, directly solicit past or present policyholders of Company, for any and all purposes, free of any claim of the Agent or the Agent’s successor or assignee.

It became popular a couple of years ago for agencies to sell their entire book of business to insurance companies wishing to create a retail operation. This clause lessens the likelihood an agency will sell one of their company’s books to another insurance company.

It’s interesting that this clause is in the contract of one of those carriers that established a retail operation by buying a couple of agency chains.

I just wish they had bought my operation before figuring out that their expertise lies on the wholesale side!

.....

Agency may terminate the contract at any time by giving company advance written notice.

Company may terminate the contract:

If agency is in compliance with all of its obligations to company, and all applicable statutes and regulations, company will give 120 days written notice in advance of the effect date of contract termination or withdrawal of authority for any type(s) of business.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

If agency makes a written request, company will renew for one additional annual term, any policies meeting underwriting standards and expiring within a one year period following the contract termination and pay commissions at the rate in effect at the time of termination.

Company will not pay Agent commission on any policies renewed after the one year renewal option period unless an insurance statute or regulation requires Company to do so.

If agency is not in compliance with all of its obligations to company, the company may terminate the contract immediately. Company will notify policyholders of intent to not renew their policies and if company is required to renew any policy by statute or regulation, will only pay commission if required to do so by statute or regulation.

.....
This agreement may be terminated by either party upon 30 days written notice, or longer as the law requires.
.....

When required by applicable law, Company will offer to renew Policies and Renewals. Company will continue to designate Agency as the producer, and Company will pay Agency commissions on each resulting Renewal unless Agreement is terminated for failure to comply with the provisions of the Agreement.
.....

AUTOMATIC TERMINATION

If Agent’s license is canceled or nonrenewed; or

If the Agent sells, transfers, or merges his business with another agency, unless the Company expressly approves in writing the successor; or

If the Agent is an individual, upon his death or total disability; or

If the Agent accepts Brokerage Business without the written consent of Company.
.....

This Agreement, and all authority hereunder, shall automatically terminate upon the happening of one or more of the following events:

(1) If any public authority cancels or declines to renew the Agent’s license;

(2) If the Agent sells, transfers, or merges his business with another agency, unless the Company expressly approves in writing the successor; Agent shall notify the Company of its intent to sell, merge, or otherwise transfer all or part ownership of its insurance agency ... as soon as practicable, but in no event less than thirty (30) days prior to the effective date of such proposed transaction. The Company shall not unreasonably withhold its appointment of any successor producer, provided that the Agent has given the required notice and has complied with the obligations imposed by this Agreement and the successor producer in the sole, reasonable opinion of the Company, is reputable and qualified for appointment by the Company.
.....

ARBITRATION

If any dispute or disagreement arises with any interpretation of this contract, its performance or nonperformance, or any figures or calculations used, both parties will make every effort to meet and settle the dispute in good faith informally. If both parties cannot agree to a settlement of the dispute or disagreement, and if the dispute or disagreement does not involve our termination of this contract or withdrawal of authority of any type(s) of business, the matter in controversy will, upon written request of either party, be settled by arbitration.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Arbitration will be conducted following the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

The parties may agree to submit the dispute to one arbitrator; otherwise there will be three, one named in writing by each party within ten days after notice of arbitration is served by either party upon the other, and a third arbitrator selected by these two arbitrators within 15 days. If the arbitrators are unable to agree on a third arbitrator, then the third member will be chosen impartially by the American Arbitrator Association.

If the dispute is submitted to one arbitrator, both parties will share the expense of that arbitrator equally, as well as any other arbitration expenses. If the dispute is submitted to three arbitrators, each party will pay for the arbitrator that they selected, and both parties will share equally in the expenses of the third arbitrator and all other arbitration expenses. Attorney fees and witness fees are not arbitration expenses and must be paid for by the party that incurred them. The written determination of the arbitrator(s) will be final and binding on the parties.

WHY TERMINATE AN AGENCY – COMPANY CONTRACT?

Why does a carrier decide to terminate an agency / company contract?

The reasons can be boiled down to five categories:

(1) Carrier retreating from an unprofitable environment, (2) Fraud, (3) Nonpayment, (4) Low volume, or (5) High Loss Ratio.

Unprofitable Environment. Hurricane Andrew instantly changed the automobile and the property market in Florida and along the Eastern Seaboard because of the cost of reinsurance. The Arab Oil Embargo wiped out the Long Haul Truck markets due to the high number of bankruptcies. Former DOI Commissioner Ryles refused all rate relief for four years and carriers rethought their presence in Georgia. If the stock market goes down, it takes the investment income with it. Rates will have to be increased to be adequate or markets will be forced to leave the market (or reduce agents' commission).

Fraud. Lax front-line underwriting at the agency level sometimes borders on fraud. It's an easy step from “looking the other way” at a questionable risk to backdating an effective date to cover a claim. Our relationship is built mainly on trust.

Nonpayment. An agency's unpaid bills are not the concern of the carriers. It's up to the agency to figure out their cost of operation and refuse to write at a loss. Carriers deserve to be paid for the policies.

Low Volume. There's a theory that a company should get at least 20% of new business from an agency in order to get a “good mix” and not be “cherry-picked” by the Adverse Selectors a.k.a. Comparative Raters. That's 20% of NEW business, not total business. You may as well forget about transferring existing customers. All things being equal, the market in which they were originally placed probably remains the most competitive for their situation. If you can't give a carrier a good portion of new business, don't waste everyone's time by signing the contract.

High Loss Ratio. That's the carriers' problem... right? Nope! It's true that the carriers file the rates. They also assume the agency will do a proper job of underwriting and asking the questions in such a manner as to solicit the truth. It's one thing to have shock losses. Carriers understand that fact of life. It's quite another situation when a large percentage of losses involve undisclosed drivers and / or preexisting damage supposedly inspected prior to binding.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

If a carrier is forced by Georgia law to renew a policy if the policyholder insists, why not just suspend new business binding authority and not cast a negative shadow on the agency by issuing “Non-Renewal due to Termination of Agency/ Company Relationship”?

The first reason is “Apparent Authority”, a legal term which refers to situations where an agent has the manuals, signs and forms. The public may reasonably assume he has apparent authority to act as an agent of the company. The company may be “estopped” or stopped from voiding his actions even if he acted outside his authority.

The second is, assuming the business was paid for; it really belongs to the agent who may redirect it to a carrier still represented.

The third reason is a fact of life: when a relationship falls apart, a mutual distrust of the intentions of the other party comes into play and both parties are usually unhappy until it is fully dissolved.

The fourth reason is usually not used in the language of the termination letter.

Low volume and high loss ratio goes hand in hand. Low volume means the only business sent to a company are the “weakest link” situations with the least “profitable fat” built into the rate. Most company reps are provided with computer-generated reports which show the frequency of undisclosed drivers. If an agency demonstrates a lax front-line underwriting attitude on the ones with losses, it’s easy to assume the entire book was underwritten in the same manner.

Far better to get rid of all of it than wait for the other claims to appear. It’s easier to terminate with vague reasons (since none are really required) than make accusations which might have to be proven in court!

Bottom Line ... every company needs a good flow of business from an agency in order for the agency to know their underwriter, company procedures, etc.

Most agents who get terminated usually terminate themselves.

WATCH WHERE YOU SIGN

A Tale of Contracts, and the Headaches They Bring

(from the March 15, 2001 American Agents Alliance Management Memo)

One signature goes a long way. When you slap your John Hancock on the dotted line at the bottom of any contract, you are in essence agreeing to abide by all provisions within that contract. If you don’t want to be legally bound to those provisions, don’t sign the contract! And for heaven’s sake, whatever you do, read the contract thoroughly and completely before signing your pretty little name.

Before you dismiss all of this as common knowledge, think about how many times in your life you’ve actually studied a contract thoroughly before signing it. If you’re like most people, you only give the first page of the contract a passing glance before scribbling your signature on it. If you’re among this class of people (and let’s face it, most of us are), you are flirting with catastrophe. Don’t believe it? Keep reading.

We were recently notified that [American Agents] Alliance member was terminated by one of his carriers. The member, having followed our reports on [California] Insurance Code Section 769, asked us if this statute applied to his termination. You might recall that Section 769 provides that “after a written agency or written brokerage contract, where the broker-agent represents the insurer, has been in effect for at least one year, it shall not be terminated or amended by an insurer, except by mutual agreement, unless 120 days’ advance written notice has been given by the insurer to the broker-agent.”

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

We contacted the carrier to find out why they had terminated the producer without giving the mandated 120 day advance written notice. The carrier informed us that they had a mutual consent to terminate the producer in the form of a clause in his contract. The contract that our member had with the carrier contained a clause which provided that the carrier could terminate the producer at will. By signing the contract with this clause, our member had basically waived his right to the 120 days advance written notice provided by Section 769.

We contacted attorney Robert Cerny of Barger and Wolen and asked for his legal opinion.

Mr. Cerny informed us that the carrier was within their legal right to terminate the member, even without the 120 days notice. While the statute did indeed apply to this case, the clause which provided that the carrier could terminate the producer at will qualified as mutual consent.

The moral of the story is this: read your contracts thoroughly before signing. A contract is an agreement between two parties. Its purpose is to protect the interests of both parties. You don't have to sign a contract that only, or mostly, protects the other party.

Company Reps Respond

Editor's note: I asked my company friends to comment on this topic.

Dear Eddie,

Re: Contracts

In reply to your questions on Contracts. I wanted to use this space to remind many of your readers of certain things to consider before signing a new contract, including one with my company.

The contracts drawn up by the company's legal department or even worst they copied a contract from another company whose intent was to protect the COMPANY.

It does not make any difference what the marketing representative told you, if it is not in the contract, you signed, and then it will not be enforceable if you terminate.

If you sign up to be an agent of a company, ACT LIKE ONE. Many agents sign a contract with a carrier, then never write business with them because they are not the cheapest, or have the lowest down payment. If you are not going to represent them properly, cancel the contract, using a specific reason. It sends a message to the company, while increasing your desirability to the company and the marketing representative. Yes, it affects the marketing rep.'s career, but so does a non-productive agency appointment.

READ THE CONTRACT! ASK QUESTIONS! I have appointed over 1000 agents with various companies in my career, of whom only a small handful actually read the contract or questioned me on the details. It maybe a testimonial to my trustworthy nature, but the contract is a legal document, similar to a marriage certificate. When the honeymoon is over it could be ugly, if you misunderstood what was expected.

Most contracts are VOID when an agency is sold to a new owner, without the company being notified before the sale. This is because we have contracted with an individual who we hold responsible to represent us and to handle our money for us. You cannot assign that responsibility to another without our approval.

The independent agency system is an active dynamic form of marketing that has changed more in the last 10 years, than in the preceding 100 years. You can expect these changes to accelerate in the next five years. The Internet is not going to be great horrible monster than devours the agents. It is evolving into a method for instantaneous communication with the company's file and billing information, underwriters and claims people.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

In short, the agent of the company will have the same system ability as the so-called captive agents such as Nationwide, State Farm and Allstate agents. The time involved learning a company’s information system will cause the agents to reduce the number of company’s they represent.

Market pressures are actually determining how the agent is compensated. The P&C companies offer multiple tier products due to the demand, with multiple levels of compensation. If the market (a.k.a. agents) picks the lowest premiums and lowest commissions, that is what the companies will continue to offer. Selling price is important but not everything. Using the lowest priced company and selling an “add on”, temporarily raises the agents compensation, but encourages the price and commission cutting from the companies. This downward spiral in rates and commission will probably hit bottom this year or early next year. (Reinsurance treaties renew on June 30th and Jan. 1.) We will see the “thinning” out of the marginal operations on both the agents and the companies in 2001. Your contracts will not truly protect you from a wholesale withdrawal of markets as the company’s regroup. (Remember Commissioner Ryles!) The good news is Georgia is a “hot” market in the insurance business due to the boom economy in the Metro Atlanta area and low unemployment. The new influx of immigrants in our area is changing the “specialty auto” markets for those agents who can adapt to it. This same market scares the standard carriers to death because they are outside the “box” they created for their customer profile.

“Do unto others as you would have them do unto you!” – The universal golden rule to live by may not be written in your contract. The company will expect you to ask in an honest and ethical manner in dealing with the customers, the company and the money. You should expect the same from the company. If you don’t trust them, don’t represent them.

Wayne A. Hooper-

Georgia Territory Sales Manager

Unitrin P&C Group-

Charter Auto Program

Great response, Wayne! Eddie

Dear Eddie,

Usually the only time we terminate an agreement with an agency is for non payment, then of course the "book" does not belong to the agency, does it?

We have terminated NEW BUSINESS due to loss ratios being poor, but in every case we have worked with the producer for at least 3 quarters to determine what the problem is and what we can do to improve it. BUT renewals are offered and commission is paid. Most cases of loss ratio problems are due to lack of volume. Nowhere in our business, except for homeowners, is the "law of large numbers" more important. If the volume is not adequate the loss ratio will suffer.

Too many agents think it is important to have 30 companies, how in the heck can one agent support so many companies? We have, in some cases, terminated because the volume was too low and when asking the producer to "use us or lose us" the choice is really that of the agency who chooses not to use us enough to support us.

But that is not what you asked for is it? The answer to your question is that it is not the ethical thing to do for a company to “cut off” the agent and keep his /her renewals for their own.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

In my opinion, and you are more than welcome to it, if you sold it, it belongs to you. That is until that customer begins to "shop" at renewal time, for what ever reason, usually service rather than rates.

Brenda Wagoner

TRUE CONFESSIONS: Real Life Buying & Selling Stories

All I want for Christmas ... is to steal your book of business!

“Ino Betternow”, one of the owners of a small chain of insurance agencies, was recently telling me of the discovery of a plot to steal his books of business. The names in quotation marks have been changed to protect the innocent as well as the guilty.

How often do your agents get a solicitation via e-mail or snail mail from a company offering to set them up in one of their own?

As it turns out, at least five of his agency managers fell for the proposal from the “Wee, Stealum & Howe Insurance Group” and signed up for the company’s offer to fund the establishment of their own insurance agency within walking distance of their former employer.

It was suggested to them that they could copy the expiration lists of Ino Betternow’s policyholders and convince them to sign a Power of Attorney (POA) at renewal. After all, it was the employee who quoted it, sold it, serviced it and listened to the policyholder’s stories of woe on a monthly basis.

How could the agency owner seriously believe the books of business belonged to him?

Deal or No Deal

I’m told that Wee, Stealum & Howe offers to fund the agency start up costs for the first six months, up to over \$100,000. The new agency entrepreneurs receive up to 85% of the commissions paid on the stolen business and do not have to start paying on the advanced funding for up to 18 months. Wee, Stealum & Howe provides contracts with several national carriers. Since the contracts are in the name of Wee, Stealum & Howe, all commissions go to them first and proceeds are distributed to the band of thieves (after deducting costs for accounting, interest and advanced funding).

Dumb Thieves

So how did Ino Betternow stumble over the plot to steal his books of business?

One of the “Jack-some 5” took a paid sick day. While she was out, a customer came in to make a payment for a company that was not represented by Ino Betternow’s agency.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

He thought the policyholder was confused until he saw the office manager’s name listed as Agent of Record on the carrier’s monthly bill.

It seems she was already signed up with the new group and selling policies out of her Ino Betternow office even though she was still employed.

When confronted she folded like a house of cards and named four other employees who had signed up with the agency group. It seems the Ringleader of the Jack-some 5 got a signing bonus for every agent she turned on the Wee, Stealum & Howe deal.

A quick check on the insurance license information listed on Georgia’s Commissioner of Insurance & Fire Safety website confirmed Ino Betternow’s fears. Five of his agency managers were already listed as contracted with Wee, Stealum & Howe. He terminated them immediately and reminded them of the non-solicitation /non-compete agreement they had signed when they became employees.

Over the next few days Ino Betternow confirmed with several policyholders who did renew that they had been contacted by the former employees and is seeking a Temporary Restraining Order to keep them from continuing to pillage his books of business.

Wee, Stealum & Howe has a clause in the independent contractor agreement in which their thieves swear they are not under any sort of “non-solicitation” agreement but apparently ignores that fact since they were made aware of its existence and continue to temporarily support their newest agencies.

Some of the national carriers offered by Wee, Stealum & Howe are also ones represented by Ino Betternow’s agencies. Each of the local marketing reps tells me their hands are tied on acting upon the theft of renewals. They each say the marketing arrangement for Wee, Stealum, & Howe is handled by a national marketing rep who wants business “any way we can get it.”

The End is in Sight

One of the former employees had the audacity to file for Unemployment Benefits but was denied based upon the non-solicitation agreement. Too bad she didn’t get it. It would have been a relatively easy matter to prove to the Georgia Department of Labor that she was getting paid on commissions from stolen renewals while drawing unemployment benefits. You get jail time for defrauding the DOL.

Ino Betternow tells me that each of these thieves do not have any financial cushion nor training in the details of agency management. After the first six months I predict the “Jack-some 5” will soon look for ways to produce business “off the books” and rob Wee, Stealum & Howe. As my Daddy used to say, “If she’ll cheat with you, she’ll cheat on you!”

What You Can Do To Protect Your Book of Business

1. Periodically check on your employees’ license. In fact, why not have them check on it for you and print out a copy? There should be no secret that you aggressively protect your books of business.

Checking on an agent’s license is a breeze in Georgia. Got a couple of minutes to spare? Go to www.gainsurance.org and click on “Agent Search” on the left side of the screen. Next, type in First Name & Last Name or License Number to bring up your employee’s license information.

Scroll down to Company Appointments and Agency Affiliations.

I hope you are not in for a shock like that experienced by Ino Betternow.

Check with your own state’s DOI to see if such information is readily available.

2. Include a Non-Compete / Non-Solicitation / Confidentiality clause in your employee agreement. I have such an agreement that I shared with one of Georgia Insurance Agents Alliance Board of Directors. His attorney thinks it is a work of art.

It is included in this booklet.

It’s been said such documents are not enforceable. I beg to differ but would suggest to you that the more limited (specifying a time period and reasonable radius of operation); the more likely it is to be enforced.

3. Educate Employees. It’s not enough just to get employees to sign a non-compete / non-solicitation / confidentiality Agreement. You have to educate them about what belongs to them and what doesn’t.

4. Guard your trade secrets. Trade secrets are not defendable in court if everyone knows them. Develop agency policies that limit employees’ access only to the information they need to do their job. Remind them of the terms of the Non-compete / Non-Solicitation / Confidentiality Agreement and spell it out in no uncertain terms upon their departure.

5. Change all of your Insurance Carrier’s website passwords immediately upon the departure of any employee. It might be too late to keep for the enterprising thieves from stealing your current book but there’s no sense in keeping the barn door open.

Since January 1st is right around the corner consider adding “Change Passwords” to your list of New Year’s Resolutions.

BREAKING UP IS HARD TO DO!

You may someday have the occasion to receive a "Letter of Termination" from one of your carriers. How will you react? One of my readers recently received such a letter and it caused me to stop and ask a few questions. I altered the real names to make it more generic:

The Company Letter

A recent review of our records indicates a continued high loss ratio. We regret the necessity of terminating any agency agreement, but it is not feasible for us to continue a business relationship that is unprofitable.

Please do not submit any new business to our company effective immediately and verify that all company supplies in your office have been destroyed or returned to us.

Enclosed is a computer listing of policies currently assigned to your agency. Please take the necessary steps to place these risks with another company as soon as possible. We will continue to pay you commissions until expiration or cancellation of remaining policies.

The Agent's Response:

I received your letter of termination and have disposed of supplies as you requested. I will collect premiums and submit to you until I have a chance to replace my customers' coverages.

I regret this action is necessary. As you know, your company set the rates and if they are not sufficient, this is something I have no control over. As you know, I was cut off from writing new business for some time and most of my customers are receiving 30% discounts. I guess no one thought at the time rates were set that many people would keep their coverage long enough to build 30% discounts. If this was taken into consideration, my loss ratio would be 70% (which is your statewide average in Georgia).

I've enclosed an article from the September, 1999, issue of FYI: Georgia Views and News entitled "The Great Loss Ratio Farce". Your decision to terminate my contract is an example of what was pointed out in that article.

FYI's Position:

I faxed the following letter to the insurance company's Georgia Marketing Manager:

I received a copy of your "Termination of Agreement" letter.

May I ask a few questions?

(1) May I print your answers in the FYI?

(2) Why is it necessary to terminate any agency agreement? When an agency agreement is terminated, non-renewals listing the reason "Agency no longer represents Company" are usually used. It casts a doubt of stability on the agency in the eyes of the policyholder. It increases the likelihood that the policyholder will look elsewhere for coverage. Companies are required to renew if the policyholder insists.

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

(3) Why not just suspend new business? A company is forced to renew policies unless they have legitimate reasons to cancel. Non-renewals can be overridden if the policyholder wants to renew with your company. It has to be assumed a company cancels the bad guys and renews those with a calculated profit margin. That margin includes the original agent's commission.

(4) Why should the agency take steps to place renewals with another carrier? All things being equal, the premium / coverage charged by your company would still be what are best for the policyholder. Wouldn't it not be in the insured's best interest to place the renewal elsewhere?

(5) The letter includes the statement "We will continue to pay you commissions on any policies until expiration or cancellation of remaining policies. Please clarify its meaning for me. Will the company continue to pay the original agent commission on all policies renewed at the policyholders' insistence?"

(6) What answer should an agent give to new companies wanting to sign up an agency when their Producer Profile asks "Have you ever had an agency agreement canceled by a carrier?"

Should we lie and say "No" or tell the truth and not get a replacement company?

The marketing rep did not respond to my questions.

WHAT ABOUT THESE CONTRACT TERMINATIONS?

Contributed by Sonny DiMeo

www.ibnbrokers.com

The Independent Broker Network

Whenever a broker is terminated or suspended from producing for a company, the most obvious questions are, "Why did it happen?", "Was proper notification given" and "What can be done to keep the appointment." Every once in a while, an agent/broker will receive notification that their privilege to submit new business is being suspended and the most prevalent reason is based on the loss ratio experience. Insurance companies and their reinsurers have little patience with losing money and they usually act on these situations swiftly and vigorously, which includes agency terminations, suspensions and rehabilitation's.

Terminations occurred much more frequently ten years ago, prior to the Department of Insurance issuing a ruling that makes it much more difficult to completely terminate an agency. Suspensions and/or rehabilitation's are much more constructive ways to work with an agency to fix the problem. In some cases, a couple of losses on a small earned premium basis can send up the red flag and a rehabilitation is the best way to handle this problem. The word itself is much more comforting and it leaves the broker/company relationship much more intact. A high loss ratio can come from a number of sources and in some cases are not completely in control by the producer.

Here is an example. Company A appoints the agent/broker and the business begins to be submitted. Right out of the shoot, a claim occurs which eventually pays almost \$30,000. What should the carrier do? The carrier will investigate the type of claim that occurred and isolate the problem. Was there anything that could or should have been done by the producer to avoid this claim? Were all excluded drivers noted?

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

In any case, action will have to be taken and soon. In this case, by suspending new business, there will not be sufficient renewal premiums to offset this loss. Maybe it would be a good idea to allow more new business to come in unless a pattern of losses continue. These thoughts race through the minds of company managers. In most other cases a loss ratio has escalated because not enough business is being submitted and this is where you, the producer can control your losses.

Whenever possible, try to limit your business to a handful of companies that provide you the best service, compensation and stability. It sounds corny but it works. By concentrating your business with these carriers, you can afford to take a couple of hits without experiencing a spike in your loss ratio.

Your new business and renewals will help tremendously. I am sure that your marketing representatives have told you this many times, but let's review these procedures again. The first procedure is to make sure that all household members are either excluded or added to the policy. Insurance companies pay billions of dollars for "undisclosed driver" losses. Though exclusions are not entirely successful in preventing these payouts, it does have a way of sending a message to the policyholder NOT to lend the car out to unlisted drivers. The other procedure is to send a sufficient amount of business to offset these losses. When it comes down to it, how many companies does a broker really need to represent to be successful? 6, 12, 18 or more?

It all depends on the volume that an agency is sending in. If a low number of applications is produced per month, fewer companies should be employed (by spreading the business out too thin, nobody gains-one loss with any of these underutilized companies will spell disaster for the loss ratio; however, if the applications are split between 3-5 companies, a much more profitable picture appears).

I know that price is very important and that the number of "competitively priced" carriers varies from one zip code to the next, but if it is possible to adhere to the above mentioned tactic, you will find that the results will work to your advantage, especially when it comes to your annual contingency check. Now for those agencies that produce larger volumes of applications, they can afford to spread the business out with more carriers for the obvious reasons mentioned above. And finally, let's not forget another fact. The producer is not always the one to blame for bad results. If the product was under priced to start with than there is little you can do as a broker other than wait for the carrier to file their much needed rate increases.

DEATH OF AN AGENCY: For Whom Does The Bell Toll?

My Friend, It Tolls For You!

by Ed Foster of A One Stop Insurance Agency

It is a sad and also was a humbling experience to have your friend who is also in the insurance business and an agency owner come by for a visit and to learn that the purpose of his visit is to ask you if you would be willing to take over his P&C Book of business.

WHAT HAPPENED? Was my friend lazy, incompetent, didn't care, laid-back or what? Let me assure you that he is none of the above. He explained that his LIFE side of his agency was in fact very, very successful and that he was even considering expanding his operation in other areas of the state and other states as well.

He told me that his P&C book was just not profitable and in fact was costing him money and that he just wished to call it quits before it cost him more money. Would I take over his book? Folks, I DON'T WANT HIS BOOK, but I agreed to take most of it over and called another P&C agent who agreed to take the part of the book as I did not have a contract, nor do I desire a contract with a certain company that pays an agent 8% commission.

After I looked at his company contracts and the companies that my friend was representing, I began to see just what had caused my friend's demise. The contracts that he had were with companies that were paying very low commissions, not to imply that he had only these types of contracts, just that so much of his business was with these companies. Some of the companies have a multi-tier contract that allows you to choose which company in which to place the business; these companies do give the agent a choice ... 8%, 10%, 12%, 15%. He had believed his company rep who told him by selling the lower premium, even though it also paid the lower commission, that he would make it up in volume because he was keeping the business away from his competition. (Why don't the companies that want you to sell the lower premiums pay the agency higher commissions? In other words, reward the agent for giving you the business that they want? I still haven't figured that one out yet!)

My friend's expenses stayed the same, and as a matter of fact, they went up a bit when he hired that extra employee to help handle the extra volume of business.

Then there was the computer and software and things just went from bad to worse. The clients that he had insured were the type that shopped and shopped and shopped for the lowest price and for a while he did improve. But then the sales fell off, mostly the clients at renewal just went somewhere else looking for the ever all-low price. Then too, the customers that did RENEW were done so at even lower commissions, and those darn cancellations for non-payments were wiping out any commissions due.

I admire my friend that he had the courage and a BIG SWALLOWING OF PRIDE to do what he did. He took his loss and closed his P&C agency. NOW FOR WHOM DOES THE BELL TOLL? If you think that your time is not coming, if you are selling your self short and taking low commissions for your work, then THE BELL IS TOLLING FOR YOU.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

During the time that we were working on transferring these records, of course we had to discuss with my company reps what was happening and over and over they asked me to write about this agency and why it happened. You see, these reps want agencies to know that if you continue to sell at this low commissions, they too are afraid that you will fold and that hurts them as well for they will also lose an agency.

I am not going to get on my soap box and scream and holler at you for continuing to sell for these low commissions ... You will do what you will. But if I go under, it WILL NOT BE FOR SELLING FOR CHEAP COMMISSIONS. You see, I know what I am worth.

But, on the other hand, MAYBE YOU DO KNOW WHAT YOU ARE WORTH.

DONG, DONG, DONG, DONG, DONG, DONG.

Dear Ed,

You ask the question "Why don't companies that want you to sell the lower premiums pay the agency higher commissions?" They don't have to!

Don't blame the companies too much. They are just giving us what we ask for. We ask for it every time we place a piece of business.

I have a question for Independent Insurance agents: Why do you think lower premiums are "more competitive" if the reps appoint every agent in town? If a company offered a contract with premiums that always came up as the lowest but only paid 5% commission, would you quote it knowing everyone else had the same contract?

Before you answer too quickly, take a good look at your comparative rater and quiz the producers on which companies they quote.

Will the Real Owner Please Stand Up?

Rumor has it that Georgia's former Commissioner of Insurance Warren Evans had a "consumer-friendly" bill (HB1268) passed in 1988 to keep carriers from "cherry-picking" policyholders through cancellations. It was only one year later that industry "Movers & Shakers" realized the new wording could allow carriers to "legally steal" books of business and not be required to pay agents for the renewal commissions. Dean Auten of Auten Insurance Services in Brunswick is Georgia's leading advocate to amend the law. I love Dean but do not support changes in the law. It would be a waste of time and resources. Carriers will continue to include escape clauses in their contracts and can reduce renewal commission to **ZERO** if they wish. Dean's supporters can reap better results by directing their time (& money) in convincing carriers to amend their contracts to protect the agents. Why would a company agree to such an amendment? Remember the Free Enterprise System? Agents decide where business is placed. (Unless they allow the comparative rater to make the decision in which case they get what they deserve!)

Ask every marketing rep you know *"Will you continue to pay renewal commissions to me even after our relationship is broken as long as it's not for fraud or nonpayment?"* The answer will be **"Yes!"** Ask them if they're willing to put it in writing and you'll get *"I have to check with our attorney!"* By the way, the new companies coming into Georgia will agree to anything ... **before you sign the contract.**

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Several questions come to mind. The situation may vary slightly from company to company. For example, some of our relationships are agent appointed directly with company (Drive Insurance from Progressive, Permanent General or Infinity Insurance), agent appointed by insurance company but producer agreement is with the MGA (Southern General through The Insurance House), agent appointed as Subagent of MGA’s Agent-of-Record and producer agreement is with MGA (Wes Duesenberg, Jr., agent for Safeway Insurance Company of Georgia through Southern Insurance Underwriters, Inc.

Will the Real Owner Please Stand Up?

Let’s take the first example of agent appointed directly with company. What happens if Progressive terminates its relationship with the agent? Does the companies have to non-renew or is that simply at the discretion of the carrier? Does the carrier terminate to punish the agent? If the carrier does not want any more business from the agent, why not suspend new submissions and binding authority? Policyholders only see the termination in a negative light regardless of any “sugarcoated” wording in the Non-renewal Letter. OCGA Code Section 33-24-45 requires the insurer to advise the policyholder of rights to retain the policy through another agent of the insurer if the carrier issues non-renewal notices based upon the termination of an agency relationship. Years ago UNITE’s H.O.T.S. (Heard On The Street) informed us that Progressive was canceling agents in Florida and keeping the business. Progressive’s Dan Lewis confirmed the company will continue to renew the policies but the agents will continue to be paid their commission. Do they have to under Florida law, their Florida agency agreement or out of the goodness of their heart?

Agent appointed by insurance company but producer agreement is with the MGA: Agents obviously do not have an agreement with the insurance company. It’s with the MGA. If the company is bought by another entity, what rights-of-ownership does the agency really have? Does the carrier have any obligation to their appointed agent? The carrier could theoretically solicit the policyholders directly, couldn’t it?

Now, let’s take add one more layer to the relationship. Agent appointed as Subagent of MGA’s Agent-of-Record and producer agreement is with MGA: If Agent does have some ownership rights, that agent is an employee of the MGA, not the agency. Subagents’ rights are not addressed anywhere that I can find. The only rights I can find are the “Expiration Dates”. Producers are welcome to use them to solicit policyholders to transfer to other carriers represented by the agency, MGAs are probably required by their MGA contract to issue Non-renewal Letters on behalf of their carrier and include the “we’ll keep you with another one of our agents” clause.

Rates are filed and justified with expense factors; cost of acquisition is one of those factors. Is it true that a company no longer paying renewal commissions but charging policyholders based on rates approved which include the renewal commission expense factor are overcharging the consumer?

More questions that come to mind...

If you’re contracted directly with a company and are contractually guaranteed certain ownership rights, does the new owner of the company have a legal obligation to honor those rights? Can a company sell itself without the permission of its agents?

Would the sale be voided?

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

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Sample Acquisition Prospecting Letter

CONFIDENTIAL

DATE

BUSINESSOWNER

AGENCY NAME

ADDRESS

CITY ST ZIP

Dear BUSINESSOWNER,

Have you grown weary of the daily responsibilities of ownership? Are you considering retirement? Are your markets abandoning your policyholders? Perhaps you're in need of a succession plan. If so, I would like to discuss a potential business opportunity that may be of interest to you.

In the past, I have successfully acquired eligible independent agencies. This has proven to be beneficial to both parties.

At our agencies, our vision is to build lifelong relationships with our customers. You have the peace of mind of knowing we will take excellent care of the customers you have worked so hard to serve. We are proud of all aspects of the service component of our company, from product development to claims.

Naturally, I understand the need for confidentiality. If you wish, we can execute a confidentiality agreement that would apply to any of our discussions or correspondence.

I will call you within the next week to see if you have an interest in selling your independent agency to me. If your agency fits the profile, it could be very beneficial to both of us. If you would like additional details before I call, please don't hesitate to contact me at PHONE or via email at email@myagency.com.

I look forward to talking with you soon.

Sincerely,

NAME

AGENCY

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

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SAMPLE CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

AGREEMENT MADE THIS ___ DAY OF ____, 20__ BY AND BETWEEN _____ ("Buyer"), AND _____ ("SELLER").

WHEREAS, Buyer and Seller are entering into discussions concerning a possible acquisition of Seller's insurance agency;

WHEREAS, Buyer and Seller desire to review and discuss certain proprietary and highly confidential information of the other party in connection with their analysis of the proposed acquisition;

WHEREAS, Buyer and Seller desire that all of their confidential and proprietary information revealed to the other party shall be subject to the confidentiality and non-disclosure restrictions imposed by this Agreement.

NOW THEREFORE, for valuable consideration, the parties agree as follows:

1. The term "Confidential information" shall include all information, verbal or written, that is not known by or generally available to the public at large and that concerns the business and affairs of Buyer or Seller. Additionally, as Buyer and Seller have a responsibility to protect the privacy of their employees, policyholders, customers, licensors and contractors, all personal information relating to any such individual, which may be shared with, or obtained by, either party in its performance under this Agreement, shall be considered confidential information for purposes of this Section. Therefore, both parties shall comply with all state and federal privacy laws, including the provisions of the Gramm-Leach-Bliley Act. Confidential Information shall not include any information or data which (i) was in the receiving party's lawful possession prior to the submission thereof by the other party, (ii) is later lawfully made available to the receiving party by a third party having no obligation of secrecy to the other party, (iii) is independently developed by the receiving party, (iv) is or later becomes available to the public through no act or failure to act by the receiving party, or (v) is required to be disclosed by a governmental agency or by a proper order of a court of competent jurisdiction; provided, however, that the receiving party will use its best efforts to minimize such disclosure and will consult with and assist the disclosing party in obtaining a protective order prior to such disclosure. Neither Buyer nor Seller shall have any obligation to specifically identify any information as to which the protection of this Agreement extends by any notice or other action. Buyer and Seller's products/pricing, costs, customer information, programs, systems, and/or other business strategies shall be deemed Confidential Information.

2. Neither party will discuss, notify, divulge, or relay any confidential information of the other party without prior written authorization of such other party. Each party agrees:

a. it will hold the Confidential Information in the strictest confidence, and will exercise the same care with respect thereto as it exercises with respect to its own proprietary and confidential information, and will not without the other party's consent, copy or disclose any portion thereof to any third party;

b. It will restrict dissemination of the Confidential Information to only those persons within the organization that have a need to know this information; and

c. It will ensure that all employees having access to confidential information subject to this Agreement shall take all usual and reasonable measures to assure security of such information.

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

"Employee" includes but is not limited to independent service providers contracted by either party for contract, administrative, clerical, consulting or programming support.

3. The recipient party shall immediately return such Confidential Information to the party providing the information upon the providing party's request.

4. Each party agrees and acknowledges that any breach of this Agreement would cause irreparable harm for which monetary damages would be inadequate. Accordingly, each party will be entitled to seek injunctive or other equitable relief as well as monetary damages to remedy any threatened or actual breach of this Agreement by the other party.

5. This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors and assigns. Any modifications to this Agreement must be in writing and signed by all parties.

6. Seller agrees that for ___ days following the date this Agreement is fully executed, Seller will not seek or enter into discussions with any other potential buyers, or enter into any' agreements to sell the Seller's insurance agency to anyone other than Buyer.

7. Seller further agrees to cooperate in granting Buyer access to all documents necessary for Buyer to fully evaluate Seller's insurance agency.

8. This Agreement shall be governed by the applicable laws of the State of _____.

IN WITNESS WHEREOF, BUYER AND SELLER HAVE EXECUTED THIS AGREEMENT.

BY: _____ BY: _____

NAME: _____ NAME: _____

TITLE: _____ TITLE: _____

DATE: _____ DATE: _____

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AGENCY SOLD FOR \$10.00 PURCHASE AGREEMENT

This agreement made and entered into this ___ day of ___ between _____ a Georgia Corporation (hereinafter referred to as "Seller"), and., a Georgia Corporation (hereinafter referred to as "Purchaser") _____

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

WITNESSETH:

Whereas, the Seller owned and operated a certain insurance agency business at

_____ (hereinafter referred to as "agency"), as of _____: and

Whereas, Purchaser wishes to purchase all of the assets of said agency as of this ____ day of ____ subject to the terms and conditions as hereinafter set forth;

Now, Therefore, for and in consideration of the sum of Ten Dollars (\$10.00) cash to be paid in accordance with the provisions of Paragraph 9 herein, receipt and sufficiency of which hereby acknowledged by Seller and the mutual covenants and conditions contained herein and the premises hereof, and for other good and valuable consideration, the parties hereto do hereby agree as follows:

(1) Sale of Assets. Seller agrees to sell to Purchaser and Purchaser agrees to buy all of the assets of the agency, as follows:

- a. All furniture, fixtures, and equipment owned by the Seller;
- b. All of Seller's right, title and interest in and to the Seller's expirations and renewals plus all supporting documents, files, and media upon which such information is contained. "Expirations" includes the right to all of the Seller's insurance clients, renewals and the information relating to the expiration date of insurance policies placed by the Seller.
- c. All contracts with companies for agency business which may be assignable;
- d. Assignment of leases which may be assignable upon mutual agreement between and among the appropriate parties;

(2) Assumption of Liabilities Seller agrees that none of the liabilities of the agency which were incurred prior to _____ are being transferred, sold, or are in any way being assumed by the Purchaser.

Seller specifically assumes said liabilities of the agency, including but not limited to the following:

- a. Accounts current which are payable to the companies in accordance with their statements as of _____
- b. Amounts due to policy holders, insureds or applicants. insurance companies and / or general agencies, as a result of refunds of unearned premiums or commissions or excess premiums, overcharged premiums, or premiums resulting from policies prior to _____

Initial: (_____) (_____)

(3) Receipts. Purchaser shall be entitled to all receipts of the business beginning _____.

(4) Representation. Seller hereby represent and warrant that the property, assets and business being transferred herein are free of any liens or encumbrance except as described herein and that either or both have proper title or ownership in the property, assets and business being transferred. Purchaser represents that its principal officer holds a valid license entitling him to conduct the business to be conducted by the Purchaser.

(5) Records. Purchaser agrees to hold the records of Seller's business on the premises at all times and allow Seller access to such records at any reasonable time until present and prior policies expiration dates. Seller agrees that it will not disclose any customer lists, trade secrets or other information from the records of Seller to any person as such records and lists are the valuable

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

property of the purchaser. If any person requests information from any of the records of Seller, Purchaser agrees to notify Seller of such request.

(6) All checks or other proceeds that may be received by the Purchaser in payment of accounts receivable which are due to the Seller at the date of closing and in payment of accounts receivable which accrue after the date of closing for insurance policies sold by the Seller prior to the date of closing shall be turned over immediately to the Seller in the form in which they may have been received. The Seller shall deposit such checks and other bank proceeds in a bank account maintained in his own name and the Seller covenants that the funds in such bank account first will be used to pay all accounts payable and other liabilities attributed to the insurance agency business that is being sold by the Seller hereby that any have accrued up to the date of closing, including liabilities for or in connection with policies of insurance delivered prior to the date of closing.

(7) All accounts payable and other liabilities incurred by the Seller up to the date of closing in connection with the insurance agency business of the Seller shall be paid by the Purchaser and the Purchaser agrees to indemnify and hold harmless the Seller against all such accounts payable and other liabilities including claims that may be asserted against the Purchaser or the Seller, or both, as a result of any policies of insurance sold by the Seller prior to _____, excepting any liabilities that shall result from the acts or conduct of the Purchaser. .

(8) The Purchaser acknowledges that the Seller has made no representations with respect to any right on the part of the Seller to sell or deliver any of his contracts with the various companies that he has represented during the course of the conduct of his insurance agency business. The Buyer assumes the risk that all such agency contracts and other arrangements may be canceled at will and without notice, by any of the companies with which the Seller previously has placed policies of insurance. The Seller makes no representation that any of such contracts or arrangements is assignable to the Purchaser.

(9) The purchase price for the files, daily reports, and renewals of the Seller's insurance business, the furniture and fixtures owned by the seller shall be Ten Dollars (\$10.00).

Initial: (_____) (_____)

(10) Closing. Closing shall take place at the offices of _____ on _____, at which time all parties shall execute any and all documents necessary to consummate the transactions contemplated herein.

(11) Binding Affect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, shareholders, directors; officers, employees, successors, subsidiaries and assigns.

(12) Assignment. This Agreement may not be assigned by Purchaser without the prior written consent of the Seller.

(13) Entire Agreement. This Agreement embodies the entire understanding between the parties hereto, and it shall supersede all prior understandings relating to the subject matter hereof. This Agreement cannot be amended, altered, supplemented, abridged or modified, nor may any provisions be waived, except, by writing signed each party to be charged.

(15) Severability. The invalidity or unenforceability of any particular provision of this Agreement as may be determined by a court or other governmental agency of competent jurisdiction shall not affect the other provisions of this Agreement; and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

How to Evaluate, Buy & Sell a "Mom & Pop" Insurance Agency

(16) Notice. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given upon the earlier of actual delivery to the party to whom the notice is to be given or five (5) days subsequent to the mailing, certified mail, return receipt requested, with postage prepaid addressed:

If to Purchaser: _____

If to Seller: _____

(17) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

"SELLER"

"PURCHASER"

WITNESS

WITNESS

Initial: (_____) (_____)

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

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SAMPLE CONTRACT OF EMPLOYMENT

THIS AGREEMENT, entered into this _____ day of _____, 200____ by and between XYZ Insurance, Inc., a Georgia corporation (hereinafter “Corporation”) and _____ (hereinafter “Employee”).

WHEREAS, the Corporation is engaged in the insurance business as a qualified agent for several companies; and

WHEREAS, both Corporation and Employee desire to enter into an Employment Agreement;

IT IS, THEREFORE, AGREED:

1. EMPLOYMENT. The Corporation does hereby employ and Employee does hereby enter into the employment of Corporation as an employee for the business conducted by the Corporation and its agency known as XYZ Insurance, Inc. in the city of Smalltown, county of Fulton, state of Georgia.

2. TERM. Employment shall commence on the _____ day of _____, 200____. This Contract and Agreement shall be for an original term of three (3) years unless sooner terminated by either party giving to the other thirty (30) days written notice of termination. Such termination, which shall not include obligations set out in paragraphs 7, 8 and 9, shall be with or without cause. Unless so terminated, the Contract shall automatically renew itself for successive one-year terms.

Was signing the contract a condition of employment - or - was there consideration given for signing the contract if the employee was already employed by the agency?”

If the contract was signed as a condition of initial employment, you are safe. If you had employees sign a contract after they were employed (or revised the contract to take any benefit away or reduce its liberalism), the only way to assure validity is by rendering consideration (usually money) and having the employee sign the contract (or revision) with a signed notation that consideration was given and accepted by the employee. By the way, that consideration should not be nominal. \$100 to have a producer sign a non-compete and non-piracy for the first time may not be considered valid by a court, especially if there are remedies spelled out in the contract, because it constricts his rights without consideration or remuneration. It appears (whether right or wrong) that the producer would have jeopardized his job if he did not sign away his competition rights.

3. COMPENSATION. Corporation agrees to compensate Employee and Employee agrees to accept compensation in accordance with the salary, bonus, commission and other benefits as set forth in Exhibit A hereto, which is subject to modification from time to time.

4. AUTHORITY. The Employee has the full power and authority to receive and transmit proposals for contracts of surety, indemnity, mutual funds and other insurance covering such classes of risks as the Corporation may from time to time authorize; to collect, receive and receipt for premiums due on such insurance and to maintain records upon each sale on forms supplied by and in a manner required by the Corporation. Employee shall not make any expenditure or obligate the

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

Corporation in any way without the prior consent of the President or Executive Vice- President of the Corporation.

5. MAINTENANCE OF RECORDS. The Corporation shall compile and maintain true, complete and accurate records of all business transacted by the employee. Such records shall be compiled and maintained in the manner the Corporation, in its sole and absolute discretion, determine. Said record shall be made available to the Employee upon reasonable request.

6. DEVOTION OF FULL TIME AND ATTENTION. Employee shall devote exclusively during regular and customary working hours his time, energy, attention and best efforts to the performance of his duties, subject at all times to the direction and control of the Corporation, and he shall properly comply with all rules, regulation and orders that may from time to time be issued by the Corporation. Employee shall not directly or indirectly represent, be engaged by, or be in the employ of any other person, firm or corporation, or be engaged in any other business or enterprise whatsoever while he is the employee of Corporation without the prior written consent of the Corporation. Employee further agrees to, at all times, keep his personal business affairs separate from those of the Corporation.

7. CONFIDENTIALITY AND NONDISCLOSURE. Employee shall at no time divulge or disclose any information regarding the business of the Corporation, including, but not limited to customer lists, renewal lists, information concerning customers, any other matter connected with or pertaining to the business of the Corporation. It is understood and agreed by the parties hereto that all such information, customer lists, renewal lists, goodwill and information concerning customers shall, at all times, remain the sole and exclusive property of the Corporation. Upon termination, Employee will return to Corporation all records or documents of any kind or character which contain, evidence or pertain to information regarding the business of the Corporation.

8. NON-COMPETE - BUSINESS. Employee agrees that he will not within a period of three (3) years following the date of his termination of employment with the Corporation, or his retirement therefrom, directly or indirectly, by or for himself, or as the agent of another, or through all others as his agent: (a) divulge the names of the Corporation’s policy holders or accounts to any other person, firm or corporation; (b) in any way seek to induce, bring about, promote, facilitate, or encourage the discontinuance of or in any way solicit for or on behalf of himself or others, or in any way quote rates, accept, receive, write, bind, broker, or transfer any insurance business, policies, risk or accounts, written, issued, covered, obtained (whether through the efforts of the Employee or not) or carried by the Corporation.

So many agencies still have contracts that are territorial as well as time sensitive. They state that an employee cannot compete within a specified space (25 miles, a city, county or stated territory). Unfortunately, the courts have generally not agreed to the validity of territorial non-compete clauses.

The general principal accepted by the courts is that you cannot stop a person from continuing his career in his chosen field in the area in which he resides or with which he is familiar. The best non-compete terms involve a prohibition from competing on those active accounts that the producer produced during his employment at the agency. Further, the non-piracy clause prohibits the producer from soliciting any other policies or clients that are active in the agency, were active in the last year, or were solicited by him or anyone else in the agency during the last year. Of course, the clause extends beyond solicitation to any type of involvement or association with an agency soliciting these accounts and puts a reasonable time element on the clauses (2-4 years). This permits the producer to continue his career (selling insurance), but not to his former employer’s clients and prospects.

9. LEGAL EXPENSES AND INJUNCTIVE RELIEF. In the event of the violation of provisions of this Agreement, Employee understands and agrees that damages may not constitute an adequate remedy to the Corporation; therefore the Corporation may seek injunctive or other extraordinary relief. Employee and Corporation recognize that monetary damages are insufficient to compensate corporation for breach by Employee. In the event of any breach of paragraphs 7 or 8 of the Agreement by Employee, Corporation shall be entitled to damages as follows:

for any breach occurring within the first twelve (12) month period immediately following the date of termination of employment, damages shall be equal to two (2) times Employee’s total commissions booked during the most recently completed calendar year;

for any breach occurring within the second twelve (12) month period immediately following the date of termination of employment, damages shall be equal to one and one-half (1 1/2) times Employee’s total commissions booked during the Employee’s last complete calendar year of employment with Corporation;

For any breach occurring within the third twelve (12) month period immediately following the date of termination of employment, damages shall be equal to one (1) times Employee’s total commissions booked during the Employee’s last complete calendar year of employment with Corporation.

Employee also agrees that in the event a suit or action is instituted by Corporation against Employee for violation of any of the agreements contained in this Contract of Employment, Employee will pay to Corporation, in addition to any costs or disbursements provided by law, all attorneys’ fees and other expenses of litigation incurred as a result of said suit. Employee and Corporation both agree that the provisions of this Contract of Employment are not subject to arbitration.

If an agency has valid contracts with noncompetition and / or non-piracy clauses and does not pursue them one time, it virtually invalidates the contracts in the future. After all, how does he pursue the next departure when the second lost producer simply states in court that since the agency did not pursue the first lost producer, he felt that pursuing those clauses in this case is discriminatory (and it is)? We always seek what is RIGHT and pursue it with dogged determination until the situation is resolved.

How to Evaluate, Buy & Sell a “Mom & Pop” Insurance Agency

10. EMPLOYEE ACCOUNTS. Employee agrees to keep abreast of the status of all of his accounts and to make best efforts to keep collections current. Employee agrees not to enter into Installment Payment Agreements with any customers other than in accordance with the plans approved in writing by the Corporation. Corporation agrees that Employee will not be responsible for any uncollected premiums.

ERRORS AND OMISSIONS. The Corporation agrees to provide Errors and Omissions insurance coverage for the Employee. In the event the Employee involves the Corporation in an Errors and Omissions situation, the Corporation can charge back to the Employee their proportionate share of the Corporation’s financial loss. The proportionate share for the Employee shall be determined by the percentage of commission that he received on the transaction which gives rise to the Errors and Omissions situation. The financial loss to the Corporation shall be deemed to be its deductible under its Errors and Omissions policy, but in no event to exceed twenty-five Thousand and No/100 Dollars ((\$25,000.00)).

SEVERABILITY. In the event any portion of this agreement shall be deemed or held to be invalid by any Court or competent authority, all other portions hereof shall remain in effect, valid and fully binding upon the parties.

DURESS. Employee agrees that his is signing this Agreement willingly and that he is under no duress whatsoever.

MODIFICATIONS. No modifications can be made to the terms of this Agreement unless made in writing and signed by the President or Executive Vice President of the Corporation, and unless the writing specifically states that it is intended to modify this Agreement.

GOVERNING LAW. This Agreement shall be governed and construed under the laws of the State of Georgia.

IN WITNESS THEREOF, the parties have executed this Agreement this ____ day of _____, _____.

CORPORATION:

XYZ INSURANCE, INC.

By: _____

Title: _____

EMPLOYEE:

SAMPLE - This document is provided as a sample for informational purposes only and is no way guaranteed or represented to be applicable for any situation. Anyone considering entering into such an agreement should seek the counsel of their own attorneys to develop an agreement to fit their own particular situation.