Compliance Corner
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December 2013
Agent Identity Theft:
You May Be at Higher Risk than the Average Consumer

According to the 2013 Identity Fraud Report prepared by Javelin Strategy and Research, identity fraud incidents in the United States increased in 2012 for the second consecutive year, affecting 5.26 percent of adults. This report also shows that the total dollar amount stolen in the United States increased to approximately $21 billion last year.

As a licensed insurance agent, you may be at a higher risk of identity theft. Your insurance license creates additional opportunities for identity thieves to steal large amounts of money.

Over the last couple years, numerous insurance agents have had their insurance licenses hijacked by identity thieves. Identity thieves appear to be part of an organized crime group. Imposters have used identities and related licenses to create substantial losses and recovery nightmares for both carriers and the victim agents. Impacted agents have had to make efforts to try to clear up “for cause” terminations, substantial debts, credit report and income tax reporting, and investigations into whether or not they have been involved with the activity.

Carriers in our industry continue to investigate and report agent identity theft situations to state insurance departments/law enforcement agencies. Who are continuing to investigate these situations for criminal prosecution. Your awareness and timeliness of reporting of suspicions are key to protecting yourself from falling victim. Below are some tips that you can follow to help protect yourself, personally and professionally, from agent identity theft.

- Be careful when providing personal identifying information – Make sure the recipient has a need to know the information, and take steps to verify the legitimacy of the individual asking for this information prior to providing it. We have learned of at least one situation where it is believed that an agent’s identity was stolen related to providing personal information, including their Social Security Number, to an individual purporting to be selling sales leads. Think about it…does someone selling you leads need your Social Security Number?

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Agent Identity Theft (continued)

- **Review your personal information and appointments on state licensure websites regularly** – In many of these situations, contact information was changed with state departments of insurance prior to the imposters applying for carrier appointments or hijacking current appointments. **Watch for unauthorized address changes and appointments.** Regularly checking this information is especially important if you don’t have recent appointments on your license. It appears that agents that haven’t had any new appointments for an extended period may be seen as more attractive targets for identity thieves.

- **Review your consumer credit report regularly** – Federal law allows you to get a free copy of your credit report every 12 months from each credit reporting company. Through the website AnnualCreditReport.com, you can obtain these free credit reports. You may want to consider checking with a different credit reporting company through this website every four months. Watch for unfamiliar addresses in your history and inquiries from carriers that you have not applied for an appointment with. Keep in mind that many carriers run agent credit checks as part of an agent on-boarding process. If you find unauthorized credit checks from carriers, contact the carriers. If you find unfamiliar addresses, contact the credit reporting agency for more details.

- **Consider subscribing to a credit monitoring service** – There are many different credit monitoring services out there. With these services, you have the ability to be notified each time your credit is checked. This type of a service could be the difference between being notified before substantial damage is done and learning of it too late.

- **Pay attention to address change confirmations** – If you receive notice of your address being changed and you did not authorize the change, contact the sender as soon as possible to let them know that the change was unauthorized.

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**Disparaging Comments**

As a reminder, all persons associated with the sale/marketing, and distribution of North American Annuity products should be aware that the engaging in/or providing of false or misleading information about a competitor or a competitor’s product to persuade or entice the purchase of one of our products or that appears to encourage a possible replacement is prohibited by Company standards.

Focus should be on the product being advertised or discussed during the sales presentation and care should be taken to avoid making any disparaging remarks about a competitor.

The NAIC Model Advertising Regulation states: “An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends or rates or other insurers. An advertisement shall not disparage other insurers, insurance producers, policies, services or methods of marketing.”

Please keep the following in mind:

- Agents should not encourage customers to replace coverage because another company is “in trouble” or may not meet future obligations or may not be around in the future. Rather, any replacement needs to be according to state and Company guidelines and have clear benefit to the consumer.

- If approached by customers with questions about articles, care should be taken to make sure that any requests for changing coverage are based on providing all information needed to make an educated decision.

- It is a customer’s personal decision whether to cash in an insurance policy or switch to another carrier, and as always, the customer should be advised and made fully aware of surrender chargers and/or cancellation penalties, and that making such a change may not in all cases be in their best interest.

State insurance departments have in the past been very aware of this practice and some have even published bulletins. This is just a reminder to be mindful and steer clear of comments which could result in the review of your business practice.
Important Things to Consider
When Dealing With Senior Customers

Influencing How Information is Presented to a Customer

In a prior issue of Compliance Corner, we provided you with valuable information and important things to consider when dealing with senior customers. This continues to remain an important issue in our industry and as a result, we want to present you with some important points that may assist you in working with seniors. North American is committed to helping you achieve and sustain success while keeping you up-to-date with regulatory requirements which may affect your business. We ask that you thoroughly review the information below.

Financial exploitation of older adults with mental or cognitive impairments continues to be a concern. The concern will grow as baby boomers prepare to retire in large numbers and our population continues to age. In an effort to more fully protect seniors, steps have been taken at both the federal and state levels. While you owe all your customers the same obligations and duties, the age and stage in life of the customer can influence how information presented to a customer is perceived and processed. There are some important things to consider when dealing with senior customers. Information found in North American’s Compliance Manual may be a benefit to you when working with these customers.

Points to Consider

Although this is not a comprehensive list, the following illustrate some points to consider when dealing with senior customers.

Evaluating the Buyer’s Mental or Cognitive Impairment

Although agents cannot be expected to “diagnose” mental or cognitive impairment, agents who work with senior customers should always be alert to issues regarding the competency of the individual. It is unethical to sell insurance products to a person who appears to suffer from mental impairments and cannot understand the features of those products. It is also against the law in many, if not all, states.

Various indicators can be used in determining whether the prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product. This can include, but is not limited to, the following indicators:

• Another family member seems to be making all the decisions for the customer;
• The person is unable to remember facts or locate information;
• The person forgets appointments or to return phone calls; and
• The person has been diagnosed with a form of dementia.

While an agent is not expected to be able to assess the cognitive function of a senior, many states expect agents to understand that any person of unsound mind is legally restricted from entering into an insurance contract. If it is determined that a contract is purchased by a person who is not competent to make such a decision, North American reserves the right to rescind the contract and charge back any commissions paid.

North American is committed to addressing and providing you information and outside resources about potential issues affecting customers and financial professionals. Through our partnership with the Indexed Annuity Leadership Council we are working with the Alzheimer’s Association to raise awareness of the potential issues. To further assist you, visit these sites for additional information:

Delivery Receipts and Record Retention

We have discussed delivery of life insurance policies and annuity contracts in prior issues of the Compliance Corner. A recap of those requirements is provided below. First, however, we want to discuss the Company’s expectations as to additional documentation.

At Application: What Your Client Gets....

We know you complete a great deal of documentation with your customer at application and we appreciate your diligence. Many state regulations require that specific documentation be provided to your customer no later than when the application is taken. The list below is not exhaustive so make sure that you are aware of your state’s requirements.

- Copies of all sales materials
- Copy of the all pages of the signed Annuity Disclosure

At Application: What You Keep

Sometimes clarification is needed or errors need to be corrected. The Home Office expects that you maintain copies of all of the documentation completed at issue so that you may work with your customer to make corrections as needed. Reminder: don’t use whiteout as the correction will be rejected; the change must be made on the form and initialed by the customer.

If your hierarchy requires copies of this documentation, it is your responsibility (not that of the Home Office) to forward it as necessary. Further, should you later need to produce this documentation to a regulator, you need to be prepared.

Ongoing Record Retention:

As a reminder, the Compliance Manual also lists additional documentation that you should maintain as follows:

- Original sales proposals;
- A copy of any needs analysis completed during the solicitation. North American makes a fact finding form available through our website;
- A copy of any sales material and advertisements used during the sales process;
- Any written correspondence to or from the contract owner regarding the solicitation, issuance of the contract, or subsequent service of the contract;
- Documentation of phone calls to or from the contract owner addressing the above issues;
- Notes from meetings with the contract owner and;
- A copy of the contract owner’s signed delivery receipt.

State regulations vary regarding the length of time that client files are to be maintained. However, a general rule of thumb is to maintain all active client files indefinitely and all inactive files for seven years.

Policy/Contract Delivery Recap:

Delivery is not only required by the Company but by many state regulations.

- As stated in the Compliance Manual, an issued policy or contract should be delivered to your customer within 15 days from the date the Company mails it to you.
- Policies and contracts are never to be maintained in your files, even if requested by the customer.
- If you are unable to personally deliver a policy or contract and execute a signed Delivery Receipt, we recommend mailing the policy or contract directly to the customer via a return-receipt process. You should then request that the customer complete the Delivery Receipt and return it to you for submission to us.
- The Delivery Receipt, completed by the customer, should be returned to the Home Office promptly following delivery (fax is fine). As stated above, this proof of delivery may also be a regulatory requirement in your state.
- Remember: the Right to Examine or “free look” period begins when the life insurance policy or annuity contract is delivered.

Proof of delivery of the policy or contract not only protects the customer, but it may also protect you and the Company. Should a customer later state that the policy or contract was not delivered, Company records that include a Delivery Receipt can often help to clarify this issue. In addition, proof of delivery may also help to protect the agent and the Company in the event of litigation or fraudulent claims. If proof of delivery cannot be obtained and the premium is ultimately refunded to the customer, this will result in a commission reversal.
Rebating and Inducements

Rebating is simply defined as providing something of value as an inducement to purchase or renew a product or service that is not mentioned in the contract. While this may often involve monetary payments from an agent to a potential customer, there are other forms of inducement that also fall within this category. Other examples include, but are not limited to: return of commissions earned, free or discounted insurance premiums, promotional activities such as raffles or drawings conducted at lunch/dinner seminars, gift cards and prepaid credit cards.

You should familiarize yourself with the rebating and inducement requirements within your state and in the states in which you do business as in many states rebates and inducements are strictly prohibited. By current company practice and as noted in our Compliance Manual, North American does not allow an agent to rebate commissions received, regardless of applicable state law. This includes rebating to clients that are duly licensed as insurance agents.

Serial/Aggregate Annuities

As you are already aware, neither the Company nor you may provide your customers with tax advice. Depending on their circumstances, you may want to direct them to a tax advisor to discuss the potential impact of the “serial” or “aggregate” annuities rule under Internal Revenue Code Section 72(e)(11). This rule applies to annuity contracts issued after October 21, 1988, excluding immediate annuities and annuities used in qualified plan arrangements.

According to the above IRC Section, applicable annuity contracts issued to the same owner in the same calendar year will be treated as one annuity contract for purposes of determining the amount of any distribution that is includable as income. You should keep this in mind both when recommending a sale of an annuity and when surrendering or replacing an individual’s annuity contracts.

More questions? We recommend that you speak with your tax expert or refer your customer to their tax advisor for guidance as to their particular circumstances.

Important Information Regarding Replacements for Utah Agents

We’d like to remind Utah licensed insurance agents of an important requirement that became effective February 9, 2011. All Utah agents recommending the replacement of a variable annuity contract with a fixed annuity must hold a variable insurance license. This includes variable life insurance policies and variable annuity contracts. Our New Business department continually monitors applications to ensure that agents are properly licensed as required by the state in which the application is written. Please ensure that you are properly licensed when recommending the surrender of a variable contract in the state of Utah. For more information, please see Utah Rule R590-133.
Important Information:

The Sale of an Annuity Contract or Life Insurance Policy

It is important for North American to send periodic reminders regarding important Compliance issues to protect you, your customer, and the Company. The following information is being provided to all North American agents as a reminder that the North American Compliance Manual, as well as the regulations of many states, require the following:

- The agent signing an application is the same agent that meets with the customer
- The same agent must thoroughly explain the product to the customer; and
- The agent must deliver the contract to the customer.

The North American Compliance Manual (8943Z) states:

“Your signature on the application is your personal assurance that the information supplied therein is, to the best of your knowledge, given voluntarily by an eligible applicant in a complete and accurate manner. Only the licensed agent who solicited the business at the time of sale may sign the application. The signing of the application by a non-soliciting agent is prohibited.”

Remember:

- IMPORTANT SOLICITATION REQUIREMENT: Only sign the application if you solicited the sale. If another agent assisted in the sale, he or she should also sign the application – even if they are taking 0% commission. This makes it clear to everyone involved in the sale the role of the parties and who the agent is.
- You should always meet with your customer, gathering all necessary financial information. We also strongly recommend that you complete and maintain a “fact-finder” that demonstrates the financial analysis you have provided. Many regulators request this information in the event that a concern about the sale arises later.
- You must always confirm the identity of your customer and that all information on the application and suitability documentation is accurate to the best of your knowledge.
- Many agents have assistants – remember that they are to “assist.” An assistant may not substitute for an agent in any part of the solicitation of the sale or explanation of the product. IMPORTANT: THERE SHOULD BE NO CONFUSION ON THE PART OF THE CUSTOMER AS TO WHO IS THEIR AGENT OF RECORD.
- North American expects that all agents signing the application meet the customer, thoroughly explain all features of the product, including but not limited to, index crediting methodologies, surrender charge period, surrender charge schedule, interest adjustment, and the Right to Examine period. The agent must leave copies of all sales material with the customer, and deliver the customer’s contract in a timely fashion, returning the Delivery Receipt form to the Company. These expectations are mirrored in regulations in many states.

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Life Insurance Policy (continued)

By signing the application, you are taking responsibility for the sale and the information provided.

- If you are a corporate officer, do NOT sign the application unless you personally solicited the sale. Corporate officers, office administrators, etc., may not sign as if he or she sold the annuity contract or life insurance policy contract unless they actually did so.
- No agent should ever sign documentation on behalf of another agent.

Many documents related to the application for a product require the agent to certify or provide an ATTESTATION. If you did not solicit the sale, do the suitability analysis, and explain the product, you should not sign. This could include critical statements such as:

- **ACKNOWLEDGMENT OF RESPONSIBILITY FOR SUITABILITY RECOMMENDATIONS**
- I have completed a suitability needs analysis review regarding the purchase of the annuity.
- I have reasonable grounds for believing that the recommendation to purchase this annuity is suitable for the Applicant/Owner; and
- I agree to maintain records of the information provided by the Applicant/Owner and any other information used as the basis for my recommendation. I agree to make such records available for review upon request by North American.

Failure to comply with these requirements may result in rejection of new business, the termination of your appointment with North American and any affiliated companies, commission chargeback, and/or a referral to an applicable regulatory agency. Complying with these requirements helps protect you, your customers and the Company.

Thank you for your commitment to compliance and education. We appreciate your business and we’re here to help.

Call Sales Support today at 866-322-7066