



Ohio Agent's Guide on Carrier Appointment Termination Process

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Legal Disclaimer

This material is intended to provide you with general background and insight. The material does not constitute, and should not be regarded as, legal advice regarding any particular facts, circumstances, or issues. This material is not intended to serve as a substitute for legal counsel, and we advise you to contact legal counsel for specific analysis, drafting and advice.

Summary of Carrier Appointment Termination Process

An appointment represents a contractual agreement between an insurance company and a licensed agent to sell insurance products for companies with which they are appointed. While the contractual agreement primarily governs the relationship between the agency and carrier, there are certain statutory protections established for this relationship.

In this guide we will review the key contractual and statutory provisions governing the carrier agent relationship.

Contractual Provisions

Agency appointment contracts form the legal foundation for the relationship between independent insurance agencies and insurance carriers. The agency-carrier contract should set forth the rights, responsibilities and obligations of the respective parties with respect to all material aspects of the relationship. The provisions in the agency-carrier contract will likely trump any other written or oral understandings between the parties. Thus, it is imperative that agencies review, understand and, when necessary, seek to negotiate the terms of these contracts before signing and proceeding with a new or existing carrier relationship.

All carrier appointment contracts contain both without cause and for cause termination provisions.

The without cause provisions are mutual between the parties and typically permit either party to invoke this provision with 90 days advance written notice.

The for cause termination provisions typically include the following reasons:

- Failure to pay monies due
- Fraud, gross misconduct, revocation, suspension or violation of insurance licensing rules, abandonment, insolvency, conviction of a felony.

The statutory protections come into play when a carrier terminates a relationship for cause. It is critically important for Agents to read their carrier contracts and understand the key provisions governing the relationship.

Statutory Protections

Ohio law establishes several governing standards for the agency-carrier relationship. It establishes minimum advance notification requirements, restrictions on reasons for cause termination, what happens to current clients and an appeal process with the Director of Department of Insurance (DOI). In Ohio, the key statutory protections found in ORC 3905.50 include:

- Applies to every contract between a P&C insurer and independent insurance agent for every contract in effect for more than two (2) years.
- 180 advance written notice.
- Notice must include specific reason for termination of the agent and sent certified mail

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- During the 180 notice period – agency may not write new policies unless approved by the carrier. Agency may renew or effect any necessary changes or endorsements of outstanding policies of insurance that are in force prior to termination notification.
- Prohibited Reason for terminating a contract:
 - Claims experience of the agent in a single year:
 - Claims experience due to catastrophes of nature covered by a policy;
 - Claims experience under uninsured and underinsured motorists coverage.
- Appeal Process – Agency may file an appeal with the Director to determine whether it is in compliance with the law.
 - Upon receipt of this appeal, insurer shall provide the Director and agency with documentation in support of insurer's stated reason for termination.
 - Director shall promptly investigate the allegation. If the Director reasonably believes the carrier violated the statute, the Director shall conduct an adjudication hearing within thirty (30) days and make a final order.
 - All final orders are subject to judicial review.
- Non-renewal and Cancellation of existing policies – An insurer shall not cancel or non-renew any policy of insurance written through an agent upon the sole ground of the termination of the agency until the expiration of the policy term or the twelve-month period following the effective date of the termination of the contract of agency, whichever is earlier.
- Exceptions – These protections do not apply to an agent whose license has been suspended or revoked by the DOI, exhibited gross incompetence, or whose contract is being terminated for insolvency, abandonment, gross or willful misconduct, or failure to pay an insurer.

Summary of Key Contractual Provisions in the Agency-Carrier Contract

Big I Guide to Agency-Carrier Appointment Contracts – Key Considerations and Sample Provisions

There are several key provisions in every agency-carrier appointment contract, including: Ownership of Expirations, Commissions, Payment Procedures, Personal Guarantees, Premium Collection, Indemnification, Changes in Agency Ownership, Carrier Communications with Insureds, Claims Reporting, Notice Requirements, Termination, Post-Termination Rights and Responsibilities, Audit Requirements, Confidentiality, Data Security and Preservation of Records and Company Property.

For the purposes of this Agent Guide, we are going to focus on the provisions related to Termination and Post-Termination Rights and Responsibilities. If you find your agency in the situation where a carrier relationship feels fractured and may be pending action, be sure to review the termination provisions so you can understand the notification requirements and timing options you will have as you work to find a new carrier for the business being terminated with the appointment.

Termination

Key considerations

- The agency should ensure that the contract provides for reasonable advance written notice prior to termination. It is typical for contracts to provide for at least 90 days advance written notice prior to termination.
- The agency should be aware of the circumstances under which the carrier may terminate with little or no notice. The agency may want to request written notice of any termination and an opportunity to cure certain terminations.
- The agency should examine how the company will notify insureds of the termination.

Sample language

This Agreement may be terminated as follows:

1. By mutual written agreement between the Agent and the Company.
2. The Company may terminate this Agreement only upon written notice to the Agent. Except as provided herein, such notice shall be given not less than one-hundred eighty (180) days in advance of the effective termination date except that if the reason for termination is a change in the ownership of the Agent, the notice period shall be not less than thirty (30) days or the minimum period required by law, whichever is longer.
3. The Agent may terminate this Agreement immediately upon written notice to the Company.
4. The Company reserves the right to terminate Agent immediately upon written notice in the event of fraud, violation of applicable insurance laws and regulations, the Agent's material breach of this Agreement, Agent's filing for bankruptcy protection, or the appointment of a receiver over any of Agent's assets; provided, however, that in the event of an alleged material breach, the Company shall provide the Agent with written notice and at least ten (10) business days to cure the alleged material breach.

Post-termination Rights and Responsibilities

Agency and carrier business needs and circumstances change over time, and carrier relationships inevitably will come to an end. Some contracts, however, fail to address what happens next. As such, agencies need to consider their rights and responsibilities after a notice of termination. Of particular importance are provisions relating to: the payment of commissions on policies that continue after termination; agency's ongoing access to its clients' records, including any records in the carrier's database; the authority to service policies after termination (e.g. under a limited agency agreement); and their clients' renewal rights upon policy expiration.

Key considerations

- Appointment contracts often permit carriers to cancel all policies as soon as permitted by applicable law. A run-off provision provides agencies and insureds with greater certainty following termination of the contracts.
- A run-off provision should provide a period of time (e.g., one year) after termination during which the carrier agrees to renew all policies that meet current underwriting standards.
- A run-off provision should specifically state that the agency has the authority to service policies following the termination of the contract *and* to receive commissions at a pre-determined rate (e.g., the rate in place at the time of the notice of termination).
- Be aware of provisions that require the agency to service policies but do not require the carrier to pay commissions unless provided by law.
- The agency should look out for language that allows the company to engage in selective cancellation without regard to its current underwriting standards. Such language may undermine the effect of the run-off provision.

Sample language

Policies in force prior to termination of this Agreement will be permitted to run to the applicable policy's expiration, or in the case of continuous policies, to the next anniversary of their effective dates. The Company agrees to renew all policies that come up for renewal within a one-year period following the date of termination of this Agreement and that meet the Company's current underwriting standards. The Company agrees that such renewals shall be on the terms in effect on the date of termination. Subject to requirements imposed by applicable law, the Agent shall continue to perform all other duties contemplated under this Agreement necessary for the proper servicing of all insurance policies in force prior to termination of this Agreement, as well as any renewal policies bound on or after the date of the termination of this Agreement, until all such in force policies expire. The Agent shall receive commission on all such policies at the rate in place on the date of the notice of termination.

State Statues and Rules

Like most state insurance laws and regulations, the rules governing the agency-carrier relationship vary widely from state to state.

Some states defer to the contractual agreement between the parties, whereas others provide specific protections and time for independent agents to find a new carrier for their current clients.

Depending on where your agency is appointed to do business with the carrier and the location of your agency appointed to do business with the carrier will likely dictate which state laws are applicable to the relationship. It is important to know whether a state:

- Requires a carrier to provide advance notification to an agency when they are terminating a relationship.
- Requires a carrier to permit the agency's clients to complete their current policy term with the carrier.
- Restricts the reasons why a carrier may terminate an agency appointment for cause.
- Restricts or prohibits the agency from writing new business with the carrier during the termination notification period.

Because regulation is at the state level, this question needs to be answered by the state's DOI where you have the Agency-Carrier Contract. You must check with the DOI for each state where you have a primary contract and verify the required laws and regulations.

Ohio Revised Code Section 3905.50 | Terminating independent insurance agent contract.

Effective:

September 1, 2002

Latest Legislation:

Senate Bill 129, Senate Bill 138 - 124th General Assembly

(A)(1) Except as provided in division (A)(2) or (3) of this section, this section applies to every contract of agency between a property and casualty insurance company and an independent insurance agent which has been in effect for not less than two years.

(2) This section does not apply to a contract of exclusive employment by, or an exclusive agency contract with, a single insurer or group of insurers under common ownership or control.

(3) This section does not apply to an agent whose license has been suspended or revoked by the superintendent of insurance, an agent who has demonstrated gross incompetence, or an agent whose contract has been terminated for insolvency, abandonment, gross or willful misconduct, or failure to pay to the insurer, in accordance with the agency contract, moneys due to the insurer upon written demand of the insurer.

(B) No insurer shall terminate an independent insurance agent contract of agency except by mutual agreement of the parties or upon one hundred eighty days' written notice to the independent insurance agent.

(1) Such notice shall include specific reasons for the termination of the agent.

(2) Such notice shall be sent by certified mail, return receipt requested, to the last known address of the agency.

(C) During the one hundred eighty-day notice period, an independent insurance agent shall not write or bind any new policies on behalf of an insurer without written approval from the insurer. However, during such period, an independent insurance agent, subject to the current underwriting rules, guidelines, commission rates, and practices of the insurer, may renew or effect any necessary changes or endorsements of outstanding policies of insurance that are in force prior to the date of receipt of the notice of termination.

(D) None of the following constitutes an acceptable reason for the termination of a contract of agency:

(1) Claims experience of the agent in a single year;

(2) Claims experience due to catastrophes of nature covered by a policy;

(3) Claims experience under uninsured and underinsured motorist coverages.

(E) An agent aggrieved by the conduct of an insurer in its breach or termination of a contract of agency may file with the superintendent a request that the superintendent review the action to

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determine whether it is in accord with this section and the lawful provisions of the contract of agency and send a copy of the request to the insurer at the address of the office issuing the notice of termination. Upon receipt of such a request, an insurer shall promptly provide the independent insurance agent and superintendent with documentation in support of the insurer's stated reason for termination.

(F) The superintendent shall promptly investigate the allegation. If the superintendent has reasonable cause to believe that this section or the lawful provisions of the contract of agency have been violated, the superintendent shall, within thirty days of receipt of a request for review, conduct an adjudication hearing subject to Chapter 119. of the Revised Code, held upon not less than ten days' written notice to the agent and the insurer. Pending a final order in the adjudication hearing, the superintendent may take such interim action as necessary to protect the parties or the public. During the pendency of the proceeding before the superintendent, the contract of agency subject to the proceeding continues in force and division (C) of this section applies. The superintendent shall, within thirty days following such hearing, issue an order approving or disapproving the action of the insurer. All final orders and decisions of the superintendent are subject to judicial review as provided in Chapter 119. of the Revised Code.

(G) An insurer shall not cancel or nonrenew any policy of insurance written through an agent upon the sole ground of the termination of the agency until the expiration of the policy term or the twelve-month period following the effective date of the termination of the contract of agency, whichever is earlier. However, during such period, an independent insurance agent may, subject to the current underwriting rules, guidelines, commission rates, and practices of the insurer, effect any necessary changes or endorsements to outstanding policies of insurance that are in force prior to the date of termination.

This section does not abridge, restrict, or supersede the rights of an agent to the ownership of expirations provided for in any contract with an insurer.

(H) Any information or documentation provided to an agent or the superintendent by an insurer under this section is confidential and shall be used by the superintendent only in the exercise of the proper functions authorized by this section. No insurer is liable for furnishing information or documentation in compliance with this section if the insurer acts without malice and in the reasonable belief that such information or documentation is warranted by this section.

(I) Notwithstanding division (H) of this section, the superintendent may do either of the following:

(1) Share the information or documentation that is the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential status of the confidential information or documentation and has authority to do so;

(2) Disclose any information or documentation that is the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

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(J) Notwithstanding divisions (H) and (I) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential information and documentation received pursuant to division (I)(1) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential status of the confidential information or documentation and has authority to do so.

(K) Notwithstanding divisions (H) and (I) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose information and documentation that is the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(L) Nothing in this section shall prohibit the superintendent from receiving information and documentation in accordance with section [3901.045](#) of the Revised Code.

(M) The superintendent may enter into agreements governing the sharing and use of information and documentation consistent with the requirements of this section.

(N)(1) No waiver of any applicable privilege or claim of confidentiality in the information and documentation that is the subject of this section shall occur as a result of sharing or receiving information and documentation as authorized in divisions (I)(1), (J), and (L) of this section.

(2) The disclosure of information or documentation in connection with a regulatory or legal action pursuant to divisions (I)(2) and (K) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the information or documentation to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

The Legislative Service Commission presents the text of this section as a composite of the section as amended by multiple acts of the General Assembly. This presentation recognizes the principle stated in [R.C. 1.52\(B\)](#) that amendments are to be harmonized if reasonably capable of simultaneous operation.

Carrier Contracts

Review your specific carrier contracts and verify the termination language in your agreements. The key provisions are related to the impact on the current clients, renewal of current clients and the agency's authority to place new business after notification of termination has been provided.

A best practice is to keep a spreadsheet of the key provisions in each agreement so you can review the key provisions in an efficient manner. Below is some sample language that may be contained in Agency-Carrier Contracts.

This Agreement shall continue in full force and effect until terminated for any reason or no reason upon sixty (60) days prior written notice to the other Party.

This Agreement may be terminated immediately for cause by either Party by providing the other Party written notice of termination upon occurrence of one or more of the following:

A. Any serious and material willful misconduct, violation of law, or any act of fraud or dishonesty by either Party or any of their officers, directors or employees relating to the Programs;

B. Non-payment of premium owed the Company or any non-payment of return commission owed to the Company;

C. Insolvency, bankruptcy, or admission in writing by a Party of its inability to pay debts as they become due, assignment for the benefit of creditors, or appointment of a trustee, receiver or liquidator for Agency or the Company;

D. Breach of a material term or condition of this Agreement by a Party;
Or

E. Suspension, revocation or termination of either Parties' license(s) or authority necessary to perform the duties and obligations under this Agreement.

On the effective date of termination of this Agreement, all premiums owed the Company shall be due and payable. The Company agrees that commissions will be remitted and applied, including any additional premiums collected and paid to the Company. In addition, it is agreed that upon cancellation of a policy, a return commission shall be repaid to the Company by Agency.

On the effective date of termination, Agency shall have no authority to produce new business under this Agreement. Further, Agency may service any in force policies under the Agreement, until their natural expiration. Agency shall not be permitted to renew any in force policies unless required by applicable state law.

More Information

For general information on agency-carrier contracts, we recommend you contact OIA, Big I National and other trusted partners with your agency.

For specific questions regarding your situation, we recommend you contact OIA, seek counsel from your personal Attorney and the Ohio Department of Insurance if you intend to dispute the reason for the termination.

The information provided in this publication is not intended to be a substitute for legal advice. You should consult your legal counsel and make certain that you are fully protecting your agency and clients in accordance with the contract and state law. These laws and rules are subject to change.

If you have more questions about this guide, please contact: OIA at (800) 555-1742 for the most up-to-date information.