



Your agreement with your customer

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Does your brokerage have a contract with each of your customers establishing your relationship with them? The answer in all cases is ‘yes, you do.’ When the courts have been called upon to decide whether an agent has fulfilled the agent’s responsibility to a particular customer they have decided that there is, in fact, a contractual obligation. Even though there is usually no written contract in existence, the courts ‘deem’ the relation between the agent and the customer to be a contractual relationship. Having decided that there is a contract, the courts then go on to deem or impose the contractual terms that the courts believe should exist.

One example of the contractual term that the court imposes on an agent is the obligation to obtain the coverage requested by the customer. If the brokerage fails to procure the requested coverage, then the courts

would consider the agent to be in breach of contract and award damages for the consequences of the breach.

A potential problem with a deemed contract is that you might not know what terms the courts have decided will apply to your relationship with your customer. While you can learn about the current state of the law, you won’t know about changes to the law unless you happen to regularly monitor legal literature. Rather than leaving your contractual relationship with your customers to be decided by the courts, you can take control of the situation by putting your own written agreements in place.

Many other professionals have already adopted the practice of having written agreements with their customers or clients. For example, accountants and lawyers regularly use ‘retainer agreements’ to establish the terms of their relationship with

their clients. These agreements do more than establish the obligation to pay the professional fees that will be incurred. They also set out the extent of the firm’s responsibilities and the limitations on their duties to you. Before your accountants will perform your firm’s audit, they will expect you to sign a letter spelling out what services they will undertake to complete the audit. Similarly, if you retain a lawyer to take on a particular project, the lawyer will expect you to sign a retainer agreement which sets the parameters of the representation, included who the clients is and who the duty is owed to.

If you haven’t already done so, you should consider adopting a similar practice for your brokerage. The purpose of the contract would be to set out the scope and parameter of your obligation to your customer. Topics that you might consider including in the contract would be:



- The process by which coverage may be placed. You might indicate that coverage cannot be placed by telephone and that only a direct conversation with an agent or an email or other form of writing would be sufficient to place or change coverage;
- That you are not responsible for sending reminder letters to your customers if they fail to pay installments of premiums when due;
- The customer's consent to the use and retention of personal information in a manner which complies with applicable privacy legislation;
- The customer's consent to using electronic messaging in a manner that complies with Canada's anti-spam regulations.

These are just a few examples of the provisions you might include in your written agreement with your customers. In each case your contract would be adapted to meet your own needs, your office practices and your experiences.

Having an express contract where both you and your customers know the terms that apply to your relationship will help you manage and limit your risk. 📌



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