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Legal News Alert is part of our ongoing commitment to providing up-to-the minute information about pressing concerns or industry issues affecting our clients and our colleagues.

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Florida Legislature Revises Agency Licensing Requirements

In 2005, the Florida Legislature passed Senate Bill 1912 (the "2005 Agency Act"). As part of the 2005 Agency Act, effective October 1, 2006, every individual, firm, partnership, or association was required to obtain an insurance agency license or registration for each place of business at which it engaged in any insurance activity. As the industry knows, this requirement applied to every location out of which an insurance agent operated, resulting in the licensure or registration of thousands of resident and nonresident insurance agency locations.

In 2007, the Florida Legislature made changes to the agency licensing requirement in Council Substitute for Council Substitute for House Bill 1381, now codified at Chapter 2007-199, *Laws of Florida* (the "2007 Agency Act"). First, the Legislature created an additional exemption from the licensing requirement and allows certain agencies to register under the law rather than seek licensure. In particular, the law added the following category as eligible for registration: "each agency designated and subject to supervision and inspection as a branch office under the rules of the National Association of Securities Dealers (NASD)" §1, Ch. 2007-199, *Laws of Fla.* This new registration option became effective as of July 1, 2007.

Under this new provision, branch offices under the NASD rules are now eligible to register as agencies under Florida law rather than seek licensure. Prior to this change, only insurance agencies which had been in business before January 1, 2003, and which were either wholly owned by insurance agents currently licensed and appointed or publicly traded, were eligible for registration. Thus, the new law significantly expands those agency locations eligible for registration. However, there are a couple of issues regarding the scope and applicability of this new registration option that remain uncertain at this point.

One of the open issues is whether agency locations that meet this new registration eligibility requirement, but which have previously obtained licenses in accordance with the law as originally adopted, may convert their licensure status to that of registration. In prior guidance, The Florida Department of Financial Services (the Florida DFS) had indicated the answer to this question as follows:

> (9) **Question:** If an agency qualifies for registration but chooses to apply for licensure, can it later file for registration?
>
> **Answer:** No. Once an agency has obtained licensure, it cannot be registered.

Agency Licensing & Registration, Frequently Asked Questions (updated October 13, 2006). The primary advantage of converting existing licenses to registrations and registering new locations in lieu of licensure is that licenses need to be renewed every three years whereas registrations are permanent.

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Another open issue is whether the new registration option will be limited to branch offices that were in business prior to January 1, 2003, or whether it will apply to branch offices that began operating after that date.

The Florida DFS has not issued any written guidance on these two open issues, but based upon informal conversations with officials at the Florida DFS, it appears that the new registration option may be available to branch offices that have previously been licensed as well as to branch offices which commenced business after January 1, 2003.

A second change made by the Florida Legislature under the 2007 Agency Act is that the Legislature clarified certain requirements for the "agent in charge" for more than one agency location. The 2005 Agency Act requires that each agency location have an "agent in charge." The Florida DFS interpreted this to mean an individual only can be an "agent in charge" at one location and did not permit an individual agent to act as an agent in charge at more than one location. In fact, in the Florida DFS's written responses to the American Council of Life Insurers (ACLI) comment letter of 8.31.06, the Florida DFS indicated as follows:

> The Department is candidly a little skeptical of a single agent with no support staff operating several locations. However, in keeping with the hypothetical, if an agent maintains several locations and one or more is locked up, lights out and obviously closed while he is at another location, then under those circumstances, he can be designated "agent in charge" of the multiple locations. However, if an office is open, lights on, and it is open for business, it needs to have an "agent in charge" available. Any location that is open for business much have an "agent in charge" on location.

The recently passed 2007 Agency Act modifies the Department's guidance on this by providing, that

> the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when the agent is not physically present and unlicensed employees of that location do not engage in any insurance activities requiring licensure as an insurance agent or customer service representative.

§4, Ch. 2007-199, *Laws of Fla.*

Thus, the new legislation permits an individual agent who is working at more than one location to be the agent in charge at each location without literally shutting off the lights and locking the doors as was previously required under the guidance provided by Florida DFS outlined above. Nonetheless, the agency location may not engage in any insurance activities while the individual agent who is the agent in charge is not physically present. Thus, this new law may have limited benefit to the industry.

Further guidance is being sought from the Florida DFS regarding the 2007 Agency Act, in particular with respect to the scope and applicability of the new registration alternative available for NASD branch offices.

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