

RH04039144
CALIFORNIA CODE OF REGULATIONS
TITLE 10, CHAPTER 5
SUBCHAPTER 1, ARTICLE 5.9
BROKER FIDUCIARY DUTIES

PROPOSED CHANGES APRIL 12, 2005

Deletions to the 10/18/05 version are indicated in strikethrough; additions are in italics.

2184.1 Applicability

This article applies to all ~~insurance transactions~~ *lines of insurance and all producers.*

Authority: Insurance Code section 790.10

Reference: Insurance Code sections 790, 790.01, 790.02, ~~and~~ 790.03(b), *and* 790.10

2184.2 Definitions

The following definitions apply for purposes of this article.

- (a) ~~"Broker" means a person, including an agent appointed pursuant to Insurance Code section 1704, who represents, purports to represent, or allows a client reasonably to assume he or she represents, a client in an insurance transaction. "Client" means a person with whom a producer transacts insurance.~~
- (b) ~~"Client" means an insured or prospective insured with whom a broker transacts or may transact insurance. "Producer" means a person possessing a license described in Chapters 5 and 7 of Part 2 of Division 1 of the Insurance Code.~~
- (c) ~~"Income" means receipt of anything of value.~~
- (d) ~~"Material fact" means a fact that will more likely than not influence either the particular client or a reasonable client in forming his or her estimate of the advantages and disadvantages of a proposed agreement, policy or relationship, or in making his or her inquiries. A broker has the burden of proving that a fact alleged to have been material is not material."~~
- (e) ~~"Best available insurers" means the most suitable insurers for the client based on coverage, service, financial security and price, that are willing to provide the requested coverage through the broker.~~

Authority: Insurance Code section 790.10.

Reference: Insurance Code sections 790, 790.01, 790.02, ~~and~~ 790.03(b), *and* 790.10

2184.3 Misrepresentation *and* unfair acts

A broker who fails to disclose to a client all material facts surrounding the broker's receipt or potential receipt of income from a third party, which income derives in whole or in part from a transaction on behalf of the client, violates Insurance Code section 790.03(b).

(a) A producer commits a misrepresentation in violation of Insurance Code section 790.03(b), and an unfair act in violation of Insurance Code section 790.02, if he or she fails to advise a client, prior to signing an agreement or receiving a fee, whether the producer will seek a quote for the client from one insurer or more than one insurer.

(b) A producer who advises a client that he or she will seek a quote for the client from more than one insurer, and who makes a recommendation or recommendations to the client regarding the quotes received, commits a misrepresentation in violation of Insurance Code section 790.03(b), and an unfair act in violation of Insurance Code section 790.02, if he or she fails to advise the client, prior to or at the time the recommendation is made:

(1) Whether the producer is acting on behalf of the insurer or the client in connection with the placement of insurance. A producer who accepts a fee from a client is conclusively deemed to be acting on behalf of the client.

(2) About the amount of compensation the producer will receive if the client places insurance with any insurer recommended by the producer. If the amount of compensation cannot reasonably be known at the time this disclosure is made, the producer may disclose the method by which any such compensation will or may be calculated.

(c) A producer who advises a client that he or she is acting on behalf of the client, or who accepts a fee from the client, commits an unfair act in violation of Insurance Code section 790.02 if he or she accepts any compensation from a third party that derives in whole or in part from a transaction on behalf of a client without first obtaining the consent of the client.

(d) A producer who advises a client that he or she will seek a quote for a client from more than one insurer commits an unfair act in violation of Insurance Code section 790.02 if he or she fails to disclose to the client the number of quotes obtained and the name of the insurer, the premium amount, and the information required by subdivision (b)(2), with regard to all quotes the client requests that he or she be given.

(e) This section shall not be deemed to limit a producer's duty to disclose other material facts not expressly required by this section, or to disclose such facts in circumstances other than required by this section.

Authority: Insurance Code section 790.10.

Reference: Insurance Code sections 790, 790.01, 790.02, and 790.03(b), and 790.10

2184.4 Fiduciary duty/Severability

(a) A broker who places his or her own financial or other interest above that of his or her client violates Insurance Code section 790.02.

~~(b) — A broker violates Insurance Code section 790.02 if, with either new or renewal business, he or she:~~

~~(1) — Fails to provide the client with the proposal of a best available insurer;~~

~~(2) — Advises a client to select an insurer other than a best available insurer;~~

~~(3) — Advises a client not to select a best available insurer from among multiple insurers suggested to the client.~~

~~(4) — Fails to take reasonable measures to obtain a quote from an insurer that might be a best available insurer.~~

If a provision of this Article, or the application of a provision to any person or circumstance, is found by a court of competent jurisdiction to be invalid, the remainder of the Article, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Authority: Insurance Code section 790.10.

Reference: Insurance Code sections 790, 790.01, 790.02, and 790.03(b), and 790.10

2184.5 Effective Date

This Article shall take effect on [insert date - 60 days from the date it is filed with the Secretary of State].

Authority: Insurance Code section 790.10.

Reference: Insurance Code sections 790, 790.01, 790.02, 790.03(b), and 790.10