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Owning an insurance agency does not equate to "owning" the customers it serves. If the agents (or producers) who have the relationships with those customers leave, and those agents do not have an effective non-piracy agreement with the agency, the business will be at risk. Owning an insurance agency without each producer and CSR being subject to a non-piracy agreement is akin to renting a business rather than owning it.

One of the first due diligence items a potential buyer of an insurance agency will want to review is the non-piracy agreements put in place by the agency. Failure to have those agreements can immediately put a transaction at risk or place the agency in a position where it is scrambling to convince the proposed buyer that the business is secure.

Building an insurance agency is about building a solid book of business. The value of the agency depends not only on the size of the book of business, but on its stability as well. The best time to think about protecting the agency's most valuable asset is when a new producer is hired. It makes better business sense to negotiate sensible non-piracy arrangements at the front end of a relationship, and in most instances the law requires that the agreement be signed at the beginning of the relationship. It is far more difficult to impose protective measures once a producer has decided to leave the agency.

A non-piracy agreement is a limited form of non-competition agreement. A typical non-competition agreement prevents an employee from competing in the same business in a specific geographical area for a limited period of time after the employee's employment is terminated. However, an insurance agency is generally not concerned about keeping its former producers from selling insurance altogether. Instead, it simply wants to keep a former producer from taking the customers of the agency when the producer moves to a new job.

In the case of an agency and its producers, non-piracy agreements are preferred to a non-competition agreement. They are less onerous to employees and are usually viewed more favorably by courts than traditional non-competition agreements.

Who Owns the Relationship?

It is expensive to build and to run an insurance agency and its owner has a legitimate motivation to protect the book of business produced by its agents. If a key producer can leave with his or her business, not only will the annual income of the agency be affected, but the price a potential purchaser will pay for the agency will be dramatically reduced as well. While it is the agency that supports the producer and provides the office, computers, support staff, insurance contracts and overhead necessary to allow the producers to sell insurance, absent a non-piracy agreement, the producer will have the right to take the business upon departure from the agency. Loyalty of the customer is often to the producer, so the best way for the agency to "own" the relationship is an effective non-piracy agreement.

What's Enforceable?

While many employees have been told that non-competition agreements are not enforceable, in truth, carefully prepared and constructed non-competition agreements are enforceable in many types of employment relationships in most jurisdictions.

The non-piracy agreement typically must also be reasonable as to duration, territory, and scope, so thought needs to be given to the minimum restraints necessary to provide protection. There is no magic formula for creating an enforceable non-piracy agreement, and it will differ depending on the unique circumstances of the agency and producer as well as the state in which the producer is located; however, the primary component of most effective non-piracy agreements is a restriction on a departing producer's ability for a period of several years to solicit or sell insurance to a customer it serviced while employed by the agency.

When it comes to enforcing a non-piracy agreement, the agency must be prepared to establish that its scope is reasonable and necessary to protect the agency's legitimate business interests. Also, it must include a strong confidentiality and non-disclosure agreement. While most states have common law rights with respect to an employee's obligation to maintain in confidence the proprietary information of the employer, a confidentiality agreement can be of significant help when a key employee departs.

Having effective and enforceable non-piracy agreements in place plays an important role in maintaining the stability of the business of an agency and is essential for any agency expecting to sell one day.

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