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REGULATORY COMPLIANCE – REPORTING CHANGES IN LICENSEE’S BACKGROUND INFORMATION

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Many licensees or applicants are unaware of the continuing requirement to notify the California Department of Insurance (“Department”) of changes in their background information provided on their original insurance applications and/or on renewal certificates. Prior to January 1, 2005, the obligation to notify the Department of changes to background information was only required by licensees on new license applications and on the license renewal certificates filed with the Department.

On January 1, 2005, California *Insurance Code* §1729.2 was enacted which requires licensees to affirmatively inform the Department of background changes within 30 days of learning of the change.

What Background Information Must Be Reported to the Department?

- A misdemeanor or felony conviction.
- A filing of felony criminal charges in state or federal court.
- An administrative action regarding a professional or occupational license.
- Discharge or attempt to discharge, in a personal or organizational bankruptcy proceeding, an obligation regarding any insurance premiums or fiduciary funds owed to any company, or managing general agent.
- Any admission, or judicial finding or determination of fraud, misappropriation, or conversion of functions, misrepresentation, or breach of fiduciary duty.

The Department defines a “misdemeanor” to be any offense punishable by imprisonment in the county jail not exceeding 1 year in the county jail, or by fine, or by both, and a “felony” as any crime for which the maximum authorized punishment exceeds one year. A

“felony” includes any crime in any other state, commonwealth, territory or possession that is identified as a felony in that state, or if not identified as a felony, any offense for which the maximum authorized punishment is one year or more.

The Department defines a “conviction” as having been found guilty by verdict of a judge or jury, having entered a plea of *nolo contendere*, having had any charge expunged, dismissed or plea withdrawn pursuant to California *Penal Code* §1203.4, or having been given probation, a suspended sentence, or a fine. A licensee should disclose any crimes resulting in convictions relating to reckless driving, driving under the influence, and driving with a suspended license, whether or not the licensee spent any time in jail, and whether or not the licensee believes the conviction has been removed from the licensee’s record.

The licensee must report any “felony” charges filed against him or her by a County or State District Attorney or United States Attorney within 30 days of the “felony” charges being filed. There is no requirement to report “misdemeanor” charges. However, if the “misdemeanor” results in a conviction, the conviction must be disclosed. There is no requirement to report an arrest.

Who Must Comply?

Any and all resident and non resident producer licensees and applicants who intend to transact insurance in or with California residents. This includes officers, directors, partners, members, or controlling persons under any resident or non resident business entity license or an application thereof. Additionally, this includes all unlicensed officers, directors, partners, members or controlling persons, or any other natural person named under the business entity or an application thereof.

In addition to notifying the Department of a change in background information, if the licensee is listed as an endorsee on a business entity license, the licensee must notify any officer, director, or partner listed on the business entity license.

How to Comply.

A licensee or applicant for license must complete a Background Information Disclosure Form (Lic Form #2557B), which can be downloaded from the Department’s Website at www.insurance.ca.gov. The completed form must be submitted to the Department with

certified copies of all court documents, setting forth the disposition of the matter, together with any other relevant documents or information that the licensee would like to have considered. All such documents must be submitted within 30 days of the change in background. The Department may request additional information after reviewing the initial submission.

Failure to timely disclose a change in background information may result in sanctions to the licensee, up to and including revocation. Generally, upon discovering an undisclosed change, the Department will issue the licensee a letter requesting a description of the change, and certified documentation, and an explanation as to why the licensee failed to respond within 30 days after discovery of the change. The licensee should timely respond to the letter and include a detailed statement as to why the background change was not disclosed in accordance with *Insurance Code* Section 1729.2.

If the licensee's disclosure of the change in background or failure to disclose results in the filing of an accusation by the Department, the licensee should immediately seek competent legal counsel familiar with insurance regulatory proceedings.

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