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## The Insurance Agent as a Professional

**This month, we will take a look at something I hope that few or none of you will ever need to look at, which is taking your insurance agent to court. This article will discuss how the court looks at insurance agents, the concept of negligence, when a special relationship exists between an insurance agent and an insured, and the issue of the insurance agent as a professional.**

How the courts look at your insurance agent's responsibility is a question every apartment owner should know. Depending on how you buy your insurance and interact with your insurance agent can result in far different levels of responsibility that your agent has toward you.

The courts agree that an agent is subject to ordinary negligence. Four elements are required for negligence to exist:

- 1) There must be a duty owed by the negligent party to another party.
- 2) There must be a breach of that duty.
- 3) An actual injury or loss must occur.
- 4) There has to be a close cause and effect (proximate cause) relationship between the breach of that duty and the injury or loss.

Unless special relationships exist, the courts have generally found the following to be true:

- Consumers have a duty to read their insurance policies.
- The insurance agent is not obligated to offer higher limits of insurance than the consumer asks for.
- Nor does the agent have a duty to advise the consumer as to the adequacy of coverage.
- "Insurance agents or brokers have no general duty to advise an insurance customer of the amount of insurance necessary to cover the customer's needs..."
- However in *Hardt vs. Brink*, an agent was judged to have a special relationship with the insured and was required to advise the insured on the adequacy of coverage.
- The agent can be held negligent for misrepresentations of the nature, extent or scope of coverage.
- The agent has a duty ask the consumer to clarify statements made by the consumer that the agent does not understand.
- The agent has a duty to act in good faith and to do what the consumer asks them to do.

Agents should be held to a duty to perform that is consistent with other knowledgeable insurance agents in the state. However, if "special relationships" exist, then the insurance agent is held to a higher standard.

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Generally, a professional is required to act within the degree of care and skill as a reasonable professional in the field. This is a higher duty of care than the reasonable and prudent person for ordinary negligence.

What this means to you is that if you use a trusted agent, renewal regularly with the same agent, have multiple policies with the same agent and communicate often, you stand a much better chance in court of having the court see that agent as having a higher duty of care than with the average agent.

On the other hand, if you regularly shop your insurance portfolio, buy your insurance from whoever happens to be the most inexpensive, and then if a coverage issue came up during a claim, the court would likely apply the reasonable and prudent person test of ordinary negligence to the insurance agent.

Some examples of how special relationships are created between insureds and their agents include:

- **When the agent holds himself/herself out to be an expert or has expertise in the type of insurance being sought by the consumer** FITZPATRIC V. HAYES, 57 Cal. App. 4th 917 67 Cal. Reprtr. 2d 455 at 452 (1997). Also HARDT V. BRINK, 192 F. Supp. 879, 881 W.D. Wash. 1961).
- **When there is a relationship of actual closeness.** i.e. there is more than an arms-length business relationship including counseling on insurance coverage the agent doesn't write or providing services above and beyond what an average insurance agent would otherwise provide in the state. WEISBLATT V. MINNESOTA MUTUAL LIFE INS. CO., F. Supp. 2d 371 (E.D. Pa. 1998). Also HARDT V. BRINK, 192 F. Supp. 879, 881 (W.D. Wash. 1961)
- **When there is substantial disparity between the agent and the insured** (i.e. the agent has significant expertise and the client is semi-literate. The doctor patient relationship is highly disparate because the patient must rely upon the doctor not only for diagnosis, but also for prescriptions and competent care). WEISBLATT V. MINNESOTA MUTUAL LIFE INS. CO., F. Supp. 2d 371 (E.D. Pa. 1998)
- **When the insured actually relies upon the agent for advice and counsel** (i.e., "recommend the limits you think are best for me and I will follow your advice," and this pattern extends over a period of time). WEISBLATT V. MINNESOTA MUTUAL LIFE INS. CO., F. Supp. 2d 371 (E.D.Pa. 1998)
- **The agent can enter into a "special relationship" with a client at any time.** It is up to a court to decide when the line is crossed and which activities of the agent contribute to the "special relationship." THOMAS MURPHY ET AL., APPELLANTS, v. DONALD C. KUHN, ET AL., RESPONDENTS. 90 N.Y.2d 266, 682 N.E.2d 972, 660 N.Y.S.2d 371 (1997).

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