

304.9-350 Compensation of agent operating under a disclosure agreement -- Requirements.

- (1) A consultant who is also licensed as an agent shall not, directly or indirectly, receive or share in both a fee and other compensation paid, directly or indirectly, from an insured or any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated, or otherwise disposed of pursuant to any recommendation given or transaction engaged in by the licensee under this license or any license issued under this code.
- (2)
 - (a) If the licensee has received or is to receive any fee, commission, or compensation from the insured or proposed insured, or from any other person other than the insurer, directly or indirectly, with respect to any insurance transaction or proposed insurance transaction, or with respect to any insurance or annuity contract existing or proposed, it shall conclusively be presumed that the licensee was acting as a consultant with respect to such transaction or contract.
 - (b) An individual or business entity dually licensed as a consultant and an agent shall not sell, solicit, or negotiate insurance, or otherwise act as an agent, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a written consulting contract required by subsection (4) of this section:
 1. During the term of the written consulting contract; or
 2. Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.
 - (c) An agent who has a financial or business ownership interest or affiliation with the consultant acting as such pursuant to a written consulting contract required by subsection (4) of this section shall not sell, solicit, or negotiate insurance, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a consulting contract:
 1. During the term of the written consulting contract; or
 2. Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.
 - (d) Consulting fees paid to a consultant pursuant to a written contract in compliance with subsection (4) of this section may be shared between a business entity licensed as a consultant and an individual who is licensed as a consultant and is an owner, officer, partner, member, or employee of the business entity.
- (3) No person licensed as a consultant under this section may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendation or giving advice with regard to any of the above, unless such compensation is based upon a prior written contract as provided in subsection (4) of this section.

- (4) Prior to the provision of consultant's services, a person licensed as a consultant under this section shall disclose the following in a written contract signed by the party to be charged:
- (a) The services to be provided by the consultant to the insured and prospective insured;
 - (b) The beginning and ending date of the agreement;
 - (c) Any insurance to which the contract for consultant's services applies;
 - (d) The arrangement for compensation of the consultant, whether by a flat rate, hourly rate, or otherwise;
 - (e) Whether the consultant is dually licensed as an agent; and
 - (f) Whether the consultant has a financial or business ownership interest in or affiliation with, or controls in whole or in part, any business entity or insurer.

A copy of every contract shall be retained by the consultant for not less than five (5) years after expiration of the contract.

- (5) No person licensed as a consultant may receive any compensation, direct or indirect, as a result of:
- (a) The sale of insurance or annuities to; or
 - (b) The use of securities or trusts in connection with pensions for any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve (12) months unless such compensation is provided for in the written contract required by subsection (4) of this section.
- (6) No person licensed as an insurance consultant under this section may be an executive in, or employee of, or own stock which gives him a majority interest, direct or indirect, in any authorized insurer. No consultant may recommend or encourage the purchase of insurance, annuities, or securities from any authorized insurer in which any member of his immediate family holds an executive position or holds a majority interest.
- (7) A person dually licensed as a consultant and an agent shall not act as both a consultant and an agent with regards to any risk which is the subject of a contract required by subsection (4) of this section.
- (8) Nothing in this section shall prohibit an agent who holds some form of formal financial planning certification or designation recognized in administrative regulation promulgated by the department from receiving a fee for services provided under that certification or designation and from receiving a commission for the sale, solicitation, or negotiation of life insurance or annuities if:
- (a) Prior to providing financial planning services, the agent discloses the following in a written contract signed by the party to be charged:
 - 1. The financial planning services for which the fee is to be charged;
 - 2. The amount of the fee to be charged, including a description of how the fee will be determined or calculated; and
 - 3. That the party to be charged is under no obligation to purchase any insurance product through the agent; and

(b) Prior to the execution of the written agreement provided for in paragraph (a) of this subsection, or solicitation of the sale of a product or service, the agent discloses that:

1. He or she is an agent; and
2. A commission for the sale, solicitation, or negotiation of insurance will be received in addition to a fee for financial planning, if applicable.

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History: Amended 2010 Ky. Acts ch. 24, sec. 1069, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 31, sec. 1, effective July 15, 2008. -- Amended 1982 Ky. Acts ch. 171, sec. 4, effective July 15, 1982. -- Created 1970 Ky. Acts ch. 301, subtit. 9, sec. 35, effective June 18, 1970.