



Agency Fees

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In general, no insurance agency can charge fees (in addition to commissions) for any services rendered in connection with the solicitation, negotiation, or servicing of any insurance contract without complying with the requirements of Minn. Stat. § 60K.46. These requirements are fairly simple to state. A written disclosure must be provided to the customer prior to rendering services. The written disclosure must contain: (i) a description of the services for which fees are charged, (ii) the amount of the fees and (iii) a statement that insurance premiums include a commission. All fees charged are reasonable in relation to the services rendered. Despite the simple nature of these requirements, we continue to see enforcement actions against agencies for violations of Minn. Stat. § 60K.46.

The attached form is an example of a document that can be used by agencies to comply with Minn. Stat. § 60K.46. It has a dual purpose of documenting the Minn. Stat. § 60K.46 and giving the agency a bit more leverage in the event the client does not pay the agency. We recommend customizing the service descriptions and fee descriptions to fit your specific needs. Such modifications should attempt to use clear and understandable language, as the purpose of the document is disclosure. Please note that customer is required to pay both fees and out-of-pocket expenses in rendering services. Whether you charge for or waive out-of-pocket expenses is up to you. Given that many commercial lines agencies use agency billing, the form also calls out that the agency can collect premiums from the customer, if the customer fails to pay premiums. Given the recent spate of customers failing to pay agency billed premiums and audit commissions, we continue to see demand for attorney's fee clauses. As such, we have included a fairly soft attorney's fee clause. Some customers may object to the agency's right to recover attorney's fees and costs of collection in the event the customer fails to pay. Use your best judgment in weighing customer concerns versus bearing the costs of collection if the relationship goes sour.



Notice: Providing this form and instructions does not constitute legal advice and does not create an attorney client relationship between you and Moss & Barnett. This form may not be appropriate for all situations. Please contact a competent legal advisor for questions regarding the application of Minn. Stat. § 60K.46 and use of this form.

DISCLOSURE, ACKNOWLEDGEMENT AND AGREEMENT

You are engaging [_____], a licensed insurance agency, (“Agency”) to assist you in the solicitation, negotiation, or servicing of insurance products. You will be charged a fee pursuant to the terms of this Disclosure, Acknowledgement and Agreement (this “Agreement”) in connection with the Agency rendering services to you.

DISCLOSURE

SERVICES. You will be charged a fee for the following services (check all that apply):

- Insurance / Bond Consulting
- Solicitation of Insurance
- Negotiation of Insurance
- _____
- Risk Management
- Captive Insurance Services

FEE STRUCTURE & AMOUNTS. The amount of the fees shall be: (Check all that apply.)

- A fixed fee of \$ _____ for each renewal period.
- An hourly fee of \$ _____ per hour.
- _____.

The fee will be payable _____.

In addition you will be charged for out-of-pocket expenses that the Agency incurs in rendering the services and/or procuring and maintaining insurance when incurred.

**THE FEES CHARGED ARE IN ADDITION TO INSURANCE PREMIUMS.
SUCH PREMIUMS INCLUDE A COMMISSION.**

ACKNOWLEDGEMENT & AGREEMENT

The fees and costs hereunder are payable on demand to the Agency. In addition, the undersigned shall promptly pay and/or reimburse the Agency for any premiums payable by the undersigned or its affiliates, whether audit premiums, agency billed premiums or otherwise. The Agency shall be entitled recover the reasonable cost of collecting the amounts payable to Agency under this Agreement, including without limitation reasonable attorney’s fees. The undersigned acknowledges and represents that he or she (i) has been provided this Agreement prior to the commencement of services by the Agency, (ii) has been advised to consult with his or her own legal advisor prior to executing this Agreement, (iii) has evaluated the fees set forth in this Agreement and determined that such fees are reasonable given the circumstances, and (iv) has been duly authorized execute this Agreement on behalf the entity identified below (if any).

Signature: _____

Name: _____

Title: _____

INSTRUCTIONS AND NOTES

1. Provide this form to customers before beginning to render services for which you will charge.
2. Identify the legal name of the agency in the first paragraph. Use the appropriate company identifier (e.g. Inc., Corp., LLC).
3. In the second paragraph you are required to identify generically the services. The check the box format is designed to give the user classes of services. It is more appropriate to have a customized description of the services. This is a form that may be customized.
4. For fee structuring, it is important to have both the amount and when such amount is payable. This Agreement also allows you to recover your out of pocket expenses in rendering services. Note, the fees have to be reasonable.
5. The acknowledgement and agreement section is not strictly required. The language is designed to help protect the agency. Note there is an explicit covenant for the insured to pay and reimburse the Agency insurance premiums and can be used as another tool to get insured to pay you upon the failure to pay audit premiums or agency bill premiums. There is a soft attorney's fee clause in case things go south. If there is pushback, a prevailing party attorney's fee clause can be substituted.
6. Make sure that the insured is correctly identified in the signature block.