

In re: BANKERS LIFE AND CASUALTY COMPANY Docket No. INS 06-203	CONSENT AGREEMENT
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This document is a Consent Agreement (hereafter, “Consent Agreement” or “Agreement”), authorized by 10 M.R.S.A. § 8003(5)(B), entered into by and among Bankers Life and Casualty Company (hereafter “Bankers Life”), the Superintendent of the Maine Bureau of Insurance (hereafter “the Superintendent”), and the Office of the Attorney General. Its purpose is to resolve, without resort to an adjudicatory proceeding, failure to comply with the requirements of the Maine Insurance Code as set forth below.

STATEMENT OF FACTS

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine’s insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction.
2. Bankers Life and Casualty Company (hereinafter referred to as “Bankers Life”) is licensed in Maine as a foreign life and health insurance company, under Maine license number LHF 127 and NAIC company code number 61263. Bankers Life is domiciled in the State of Illinois.
3. Bankers Life operates two branch sales offices in the State of Maine located at the following addresses:
 - 360 US Route 1, Scarborough, Maine 04074
 - 900A Hammond Street, Bangor, Maine 04401
4. The Scarborough branch sales office is managed by Scott W. Barker, a licensed resident producer of the State of Maine.
5. The Bangor branch sales office is managed by Lawrence Gagnon, Jr., a licensed resident producer of the State of Maine.
6. On or about April 14, 2005, Bankers Life, the Superintendent, and the Maine Attorney General entered into a Consent Agreement, Docket No. INS 05-202, in order to resolve, without resort to an adjudicatory proceeding, certain violations of the Maine Insurance Code.
7. The Consent Agreement contained multiple covenants requiring Bankers Life to take certain corrective actions including paragraph 38 which states:

Within 30 days of the date of this Agreement, Bankers Life shall ensure that all current Maine producers that do not have clearly identified on their business cards the title of “Insurance

Agent” or “Insurance Sales Representative” will have ordered and received, through Bankers Life’s approved business card vendor, new business cards identifying either respective title on their cards. Bankers Life shall ensure the destruction of current business cards that do not identify the producer with one of these two titles.

8. By letter dated April 29, 2005, Bankers Life and Casualty Company filed with the Superintendent “Institutional Advertising Business Card Form BIZCARD0405.” The letter stated that Bankers Life was filing the “form” for consideration by the Superintendent prior to its use and that the “...card format will be used by insurance agents operating in your state.” The letter went on to say that the insurance agents would have a choice of two titles: “insurance agent” or “insurance sales representative.” Lastly, the letter noted that branch office personnel “...will have titles appropriate to their position, such as “Branch Manager – Insurance Sales.” The Bureau approved Bankers Life’s business card filing on June 8, 2005.

9. By letter dated May 16, 2005, Bankers Life stated that it had complied with paragraph 38 of the Consent Agreement by modifying the business cards in accordance with its April 29 filing and assuring the destruction of noncompliant cards.

10. Bankers Life filed with the Superintendent a status report on the implementation of the Consent Agreement as of August, 2005. Consistent with the prior filing, that status report indicated that compliance with paragraph 38 had occurred as of May 16, 2005.

11. On or about August 19, 2005, and pursuant to the April 14, 2005 Consent Agreement a report of the internal audit conducted by Bankers Life of the South Portland office¹ was filed with the Superintendent.

12. The internal audit report stated that, in a random sample, ten business cards were reviewed in order to determine compliance with paragraph 38 of the April 14, 2005 Consent Agreement.

13. The internal audit report concluded that of the ten business cards reviewed, each identified the producer as an “Insurance Agent” or “Insurance Sales Representative.”

14. In the fall of 2005 the Bureau received information indicating that a producer operating out of the Scarborough branch of Bankers Life met with an elderly individual on November 3, 2005 but did not identify himself either as an “Insurance Agent” or “Insurance Sales Representative” and, in fact, provided a business card which did not indicate anywhere that either the producer or the company involved the sales of insurance products. A review of the business card provided to consumer’s sister-in-law by the producer revealed that, in fact, there was no indication on the card that either the producer or Bankers Life is engaged in the business of insurance.

15. In November of 2005 the Bureau scheduled an interim meeting with Bankers Life representatives at which time the Bureau inquired as to the extent to which noncompliant business cards were still in use by Bankers Life producers.

16. During the November 2005 meeting Bankers Life representatives informed the Bureau that to the best of their knowledge noncompliant business cards were used only the one time noted in paragraph 11 above.

17. Bankers Life representatives advised the Bureau that an error was made when new business cards were ordered following the relocation of the South Portland office to Scarborough such that business cards for management of the branch had management titles but not the title “Insurance Agent” or “Insurance Sales Representative.”

18. The producer who was the subject of the complaint received by the Bureau was in a management position for the Scarborough branch office at the time of his visit to the individual noted above.

19. During the November meeting with Bankers, the Scarborough branch sales manager indicated he had information as to the history of events surrounding the relocation and purchase and distribution of noncompliant cards which he would forward to the Bureau.

20. In response to a request from the Bureau during the November, 2005 meeting, Bankers Life then reviewed the records of both the Bangor and Scarborough branches to establish the business card history of all producers.

21. The review by Bankers Life revealed that, after cards were initially ordered as reported in the May 16, 2005 compliance filing, some noncompliant business cards thereafter had been ordered and used by multiple producers. Bankers Life’s review revealed that noncompliant business cards had been provided to producers or managers at least 20 times. The review further revealed that the noncompliant business cards had been distributed more than 800 times including 18 times by the producer referenced in paragraph 14 above. As set forth below, the external audit conducted of the Maine branches was consistent with this review.

22. On or about January 4, 2006, the Bureau received the first quarterly report of the external independent audit firm retained by Bankers Life pursuant to the terms and conditions of the April 14, 2005 Consent Agreement.

23. The external audit report encompassed the period of June 1, 2005 to September 30, 2005 and, although dated October 14, 2005, reportedly was not finalized, and provided to Bankers, by the external auditor until December 28, 2005.

24. The external audit report tested the records of both the South Portland branch and Bangor branch for compliance with paragraph 38 of the Consent Agreement.

25. The external audit report concluded that for the South Portland branch “a majority of the agents’ business cards did not state specifically state [sic] ‘Insurance Agent’ or ‘Insurance Sales Representative’ as a title.... It was not clear to this Branch that the titles should have been in agreement with the Consent Agreement.”

26. The external audit report concluded that for the Bangor branch two agents had noncompliant business cards. Additionally, the report found it was not "...clear to this Branch that the titles should have been in agreement with the Consent Agreement."

27. The external audit report recommended that agents not be responsible for ordering business cards but, rather, that this should be the responsibility of each branch. In addition, the report recommended that "all business cards should be destroyed that do not comply with the Consent Agreement and correct ones should be ordered."

28. Bankers Life states compliant business cards were initially ordered in May of 2005. However, when Bankers Life made subsequent business card orders (either due to the change in branch location or for newly-hired producers), in some cases, noncompliant cards were ordered in error.

29. Bankers Life states that the problem with the use of noncompliant business cards was more prevalent in the Scarborough office since new business cards for all producers were re-ordered following the relocation of the branch in August, 2005. Compliant business cards were ordered following Bankers Life's receipt of a draft of the external audit report, as well as after the November, 2005 meeting between the Bureau and Bankers Life, to include the specific designations of either "Insurance Sales Representative" or "Insurance Agent".

30. Bankers Life notes that in a number of circumstances the noncompliant business card was provided to an existing Bankers Life client who had previously purchased Bankers Life products and, therefore, would already be aware of the fact the producer was, in fact, selling insurance products. Bankers Life therefore asserts that such uses presumably resulted in minimal if any confusion to the consumer.

31. Bankers Life further notes that in a number of circumstances the noncompliant business card was presented to the client at a meeting at which the producer was accompanied by another producer who did provide a proper business card to the client.

32. Bankers Life notes that to the extent a noncompliant business card was used by an existing Branch Sales Manager, the card was used during recruitment and not "in the field" at a sales meeting with a potential client.

33. Bankers Life states that it has made good faith efforts to comply with paragraph 38 of the Consent Agreement including instituting additional quality control measures at the Bankers Life home office to assure the ordering and use of compliant business cards.

APPLICABLE LAW

34. Pursuant to the terms of the April 14, 2005 Consent Agreement, the Superintendent may take further enforcement action in the event that the Company does not comply with any term or condition set forth therein. Any such action may be in the form of a consent agreement, as authorized under 10 M.R.S.A. §8003(5)(B).

CONCLUSIONS OF LAW

35. Based upon the facts set forth above, Bankers Life failed to comply with paragraph 38 of the April 14, 2005 Consent Agreement, Docket No. INS 05-202.

COVENANTS

36. No later than five days following the execution of this agreement by all parties, pursuant to 10 M.R.S.A. § 8003 (5) and 24-A M.R.S.A. § 12-A, as a penalty for violating the terms of the April 14, 2005 Consent Agreement, Bankers Life shall remit to the Superintendent a civil penalty in the amount of \$ 7,500 payable to the Treasurer of the State of Maine.

37. Paragraph 41 of the April 14, 2005 Consent Agreement is amended to require the conduct of independent audits of each of the Bankers Life Maine branch sales offices on a calendar quarter basis for a period of five full years from April 14, 2005. All remaining terms of said paragraph remain in full force and effect.

38. Bankers Life understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 MRSA § 402, and will be available for public inspection and copying as provided for by 1 MRSA § 408, and will be reported to the NAIC “RIRS” database.

39. Nothing in this Agreement shall affect the rights, interests, duties, or obligations of any person who is not a party to this Agreement.

40. Although the Company’s failure to comply with paragraph 38 of the Consent Agreement is resolved by this Consent Agreement, nothing in this Consent Agreement resolves the responsibility of any appointed producers of Bankers Life for any events in which the producer failed to accurately describe him or herself as an Insurance Sales Representative, Insurance Producer, or Insurance Agent.

41. A hearing in this matter is waived and this Consent Agreement is not subject to review or appeal.

42. Nothing herein shall prohibit the Superintendent from seeking an order to enforce this Agreement, or from seeking additional sanctions in the event that Bankers Life does not comply with the above terms, or in the event that the Superintendent receives evidence that further legal action is necessary.

43. This Consent Agreement may be modified only by the written consent of all of the undersigned parties.

44. By its signature hereto, Bankers Life acknowledges that it has consulted with counsel prior to executing this Consent Agreement and that, by its signature, it voluntarily agrees to be bound without exception by all of the terms and conditions set forth herein.

1 The southern Maine branch office of Bankers Life moved from South Portland to Scarborough in August of 2005.

Executed by:

BANKERS LIFE AND CASUALTY COMPANY

Dated: _____, 2006	By:

	(printed name)
Its: _____	

State of Illinois, _____, ss Subscribed and Sworn to before me this _____ day of _____, 2006.	_____
	Notary Public

(printed name)	

THE MAINE SUPERINTENDENT OF INSURANCE

Dated: _____, 2006	_____
	Alessandro A. Iuppa, Superintendent

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: _____, 2006	_____
	Assistant Attorney General

(printed name)	