

4 Terms to Avoid When Advertising Your Insurance Agency

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Insurance, like any industry, is a business. It is therefore inherently important to attract and maintain customers, often done by touting an agency's competence, customer service and commitment to excellence in online or print advertisements. While growing and developing a customer base is paramount, care must be taken to avoid creating a special relationship or heightened duty to advise through the use of certain terminology.

The use of certain words or phrases can suggest an insurance professional is acting as a risk advisor or fiduciary as opposed to the typical arm's-length business relationship. A fiduciary is held to a higher standard of good faith and a duty to safeguard the insured's interest, even in the absence of the insured's specific request for a particular product or coverage.

Here are four words and phrases to avoid in insurance agency advertisements to help mitigate risk in 2023:

1) "Advisor" or "consultant." Insurance professionals procure the coverage requested by their customers. This may involve providing coverage and carrier options as well as premium amounts. However, the role of an advisor or consultant is far more onerous and advising a customer—as opposed to simply taking their insurance

"order"—suggests a higher responsibility and the ceding of decision-making power. Such influence may be sufficient to impute a special relationship or a fiduciary duty to advise. See *Yenchi v. Ameriprise Financial*.

Offering management or service fee agreements or risk assessments, which go beyond the mere procurement role, can have the same effect.

2) "Experts." By definition, experts have authoritative knowledge and experience in a discipline. Establishing oneself as an "expert" in a particular area of coverage may seem advantageous, but overstating expertise can invite reliance by an insurance customer, giving rise to a special relationship finding. See *Sadler v. The Loomis Company*.

3) "Guaranteed coverage." Offering guarantees is risky, no matter the circumstance. Offering guarantees of coverage when the insurance agent is not the party underwriting the risk or investigating and evaluating the claim is considered perilous and unwise.

Insurance agents and brokers procure coverage, may assist with submitting claims on their customers' behalf, and may facilitate transmittal of information from their customer to the insurance company. What insurance agents don't do is make underwriting decisions, nor do they investigate

and evaluate claims. Those tasks are completed by the insurer.

Insurance professionals should avoid suggesting that their customer's risk is covered, or that coverage will be afforded for a loss. These statements or assurances can expose the agent or broker to liability for decisions made by a wholly separate entity.

4) "Contract." Contracts are legally enforceable agreements—either oral or written. Generally, a commitment by an insurance professional to procure insurance or a commitment by an insurance customer to

pay insurance premiums is not a contract. Suggesting the existence or formation of a contract between an insurance agent or broker and its insurance customer may give rise to legal duties to perform which would not otherwise be applied or expected. It is best to avoid using this term in client solicitations.



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