

Where insurance comes from

- ✓ **Service providers** support insurers instead of issuing policies — claim-adjusting firms, inspection bureaus, and rating organizations such as ISO
- ✓ **Government** writes what the market will not
 - Federal: NFIP, Federal Crop Insurance, TRIA
 - State: unemployment and workers compensation, and residual markets — FAIR Plans and Joint Underwriting Associations
- ✓ **Private commercial insurers** need a **certificate of authority** from the state to be admitted (authorized)
Only surplus lines brokers and reinsurers may transact without one. An insurer without one is non-admitted.
- ✓ Classified by state of domicile:
 - **Domestic**: chartered in this state
 - **Foreign**: chartered in another state
 - **Alien**: chartered in another country
- ✓ **McCarran-Ferguson (1945)** left insurance to the states after the South-Eastern Underwriters decision made interstate insurance commerce, and gave insurers a limited antitrust exemption

How private insurers are organized

- ✓ **Stock**: owned by stockholders, who take stock dividends; writes **non-participating** policies. Most P&C insurers
- ✓ **Mutual**: owned by its policyowners, who take **policy dividends**; writes **participating** policies
- ✓ **Reciprocal**: subscribers insure one another under individual indemnity agreements, each with an account, managed by an **attorney-in-fact**
- ✓ **Fraternal**: member societies; mostly life and health, rarely P&C
- ✓ **Lloyd's of London** is a marketplace, not an insurer — members group into syndicates but stay individually liable. **Excess and surplus lines** are the risks no admitted carrier in the state will write
- ✓ **Reinsurance**: one insurer cedes part of a risk to a reinsurer. The **ceding company** stays responsible to its own insured
 - **Facultative**: each risk offered and judged one at a time
 - **Automatic (treaty)**: accepted in advance
 - **Quota share**: the reinsurer takes a set percentage of premium and of loss
 - **Excess of loss**: the reinsurer pays only above a stated amount

Marketing systems, authority and binders

- ✓ **Agent**: represents the **INSURER** under a written appointment
The agent's act is the company's act — an application taken, a premium paid and knowledge held by the agent all belong to the company.
- ✓ **Broker**: represents the **APPLICANT**, and may place business with several insurers
- ✓ **Solicitor**: works for an agent or broker — solicits, collects the initial premium and delivers policies, but **cannot bind coverage**
- ✓ **Direct writers** sell through salaried employees; **direct response** sells by mail and advertising, at limited benefits and low premiums
- ✓ Three kinds of producer authority:
 - **Express**: what the contract grants in writing
 - **Implied**: what is necessary to carry out the express authority
 - **Apparent**: what the insurer's conduct leads an applicant to believe — a terminated agent still holding company forms
- ✓ **Fiduciary duty**: premiums are held in a trust account, apart from the producer's own funds. The standard of care is the **prudent person rule**
- ✓ **Binder (binding receipt)**: a temporary contract giving immediate coverage — the insurer is bound even if underwriting later declines the risk. It takes the application **AND** the initial premium
- ✓ **Conditional receipts are not used in P&C** — coverage is bound at once or deferred to issue. With no initial premium the insurer may require a no-known-loss statement or an inspection at delivery

Underwriting

- ✓ What the underwriter reads:
 - **The application** — the most important source
 - **The producer's report** — field underwriting: the questions asked, the demeanor observed, the red flags documented
 - **Inspections**, to confirm the property exists and is as described
 - **Consumer reports** — credit, and investigative reports from employers and neighbors
- ✓ Applicants are classed **preferred**, **standard**, **substandard** or **uninsurable**. Rates turn on loss experience, occupancy, construction and exposure, and on the **loss ratio** — incurred losses over earned premium
- ✓ Underwriting discriminates on risk, which is lawful. **Unfair discrimination** — race, national origin, sex, religion — is not
- ✓ **Fair Credit Reporting Act**: the signed application is the authorization. Decline on a consumer report and the insurer must send an adverse action notice naming the reporting agency; the applicant asks that agency for the report, free within 60 days
- ✓ **Adverse selection**: the worse the exposure, the more insurance it seeks
- ✓ **Rating services** grade claims-paying ability — A.M. Best runs A++ and A+ (Superior), A (Excellent), then B, C, D (Poor), E for regulatory supervision, F for liquidation. Private, and not regulated by the NAIC
- ✓ **Waiver** is the insurer giving up a right, such as cancelling after accepting late payments; **estoppel** stops it taking that back to the insured's harm. Both apply once the policy is in force, not in underwriting