

DIRECTLY TO **MEMBERS**....

DIRECTLY FROM **NAAFA**

Message #143

Know your State's Non-Compete Rules

We're hearing a lot about non-competes being illegal nowadays. What's going on? Well, things are not all that cut and dried. Yes, it's true that the Federal Trade Commission (FTC) passed a law that non-competes were to become illegal in September (2024) but so far, quite a few organizations/companies are fighting the issue. It is said that about 30 million people in the US or about 20% of workers have signed non-competes.

The big question that probably will have to be settled in court is whether the FTC has the right to ban practices it deems anticompetitive. Such people claim only Congress has such authority. You might be (not surprisingly) interested to know that California, Minnesota, Oklahoma, and North Dakota have already banned non-compete agreements, and, as this article says, at least a dozen other states have passed laws limiting their use.

<https://www.insurancejournal.com/news/national/2024/08/16/788568.htm>

But now, a federal judge in Florida has temporarily blocked the FTC from applying the rule pending the outcome of *Properties of the Villages*' lawsuit claiming the commission lacks power to adopt the ban. Also, another judge in Texas blocked the FTC ruling just last month. So, you can see, it's not all clear/smooth sailing for the new FTC ruling.

Now, how does the AmFam agent contract (BTW, the non-compete clauses are virtually the same in all contracts issued by AmFam since 1993) stand up against the ban? The MN law firm of Fabyanske Westra Hart & Thomson issued an article on this topic which you can read at

(<https://www.fwhtlaw.com/blog/2023/11/02/how-minnesotas-new-ban-on-non-compete-agreements-could-affect-the-construction-industry/#:~:text=Under%20Minnesota's%20new%20law%2C%20companies,agreements%20and%20non%2Ddisclosure%20agreements.>) You might want to take the time to read this article.

Basically, what Lylee Evans from the FWHLAW.com law firm says is “Notably, the law's definition of non-compete agreement does not include **non-solicitation, non-disclosure, or confidentiality agreements**. Those kinds of agreements *would consequently still be enforceable under current legal standards*. Additionally, the law makes an exception for non-compete agreements that are made during the sale or dissolution of a business.” (Emphasis by editor)

If you look up the definition of a non-solicitation agreement, you'll find that it refers to an agreement not to solicit prior customers. The AmFam agent agreement, in this writer's estimation, would be acceptable under this guideline. The AmFam agreement requires that the departing agent refrain from soliciting the business of any AmFam clients insured by that agent at the time the contract was dissolved. And of course, there is a time limitation on that non-solicitation of one year. So, it appears that the AmFam contracts are still legal.

NAAFA might consider getting a legal opinion on this at a future date if our members strongly believe we should. Meanwhile, NAAFA highly recommends all agents adhere to the one-year non-compete after terminating agent/company contracts.



www.naafa.com

Update on the launching of the new www.naafa.com:

The launching of the website seems to have gone quite well. Agents are establishing their new passwords when they first enter the new site. If you haven't done this (set up your new password, that is) here are the instructions:

- Go to www.naafa.com
- Click on LogIn
- If it's your first time entering the members-only section, type in your personal email in the UserID slot.
- Then choose any password you like and click the Log In red button.

The next thing we want to point out is this. If you get a message that you need/or want to set a new password, just ignore it. Do remember, however, that after you once enter, you are allowed to choose another LogIn. Frankly, the email address is usually too long so pick a shorter one if you wish when you get a password reset notice.

Another notice members seem to be getting is to fill out a member application. If you are already a members, do not fill out another application. We are working on this problem and hopefully, will have it fixed soon.
