

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§314, 1111)
18 DE Admin. Code 505

PROPOSED

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 505 relating to fiduciary fund requirements for insurance producers. The docket number for this proposed regulation is 1341.

The purpose of the proposed regulation 505 is to prescribe fiduciary fund requirements and exceptions for insurance producers. The text of the proposed amendment is reproduced in the April 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday May 3, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

505 Fiduciary Fund Requirements for Insurance Producers

1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 Del.C. §§311, 1706 (e), and 2304(7). It is promulgated in accordance with 29 Del.C. Ch. 101.

2.0 Scope

This regulation shall apply to all producers as defined herein.

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Anti-commingling" is when the agent is required to keep premium monies in a separate account from the agency's capital, operating or other monies.

"Commingling" is the act of maintaining all fiduciary funds and some or all of the agency's other funds in a single banking account.

"Fiduciary capacity" is the position of a person who acts on behalf of another in matters involving property or money. The term implies a position of trust and power in which confidence is placed and responsibility and good faith are required.

4.0 Consent of the Insurer Required.

No insurance producer shall sell, solicit, or negotiate a contract of insurance and fraudulently appropriate or convert to his own use or, with intent to use or fraudulently appropriate, take, or otherwise dispose of, or withhold, appropriate, lend, invest or otherwise use or apply money or substitutes for money received by him as an insurance producer, contrary to the instructions or without the consent of the insurer.

5.0 Holding of Premium Funds

All insurance producers shall hold premium funds in a fiduciary capacity.

6.0 Immediate Remittance, Separate Bank Accounts Not Required

- 6.1 Producers who make immediate remittance of collections to their entities need not maintain separate bank accounts for these collections.
- 6.2 To constitute immediate remittance, payments to entities shall be in the same form as the collection was received from the insured, with the exception of payments by the insured made in cash or with check.
- 6.3 To constitute immediate remittance, remittance shall occur within five business days.

7.0 Mingling of Premium Funds, when permitted.

- 7.1 Insurance producers who have the express written consent of their entities to mingle premium moneys with their own funds may do so if the following exists:
- 7.2 Monies held in a fiduciary capacity are reasonably ascertainable from the books of accounts and records of the producers.
- 7.3 Amounts due entities are equal to or less than the combined accounts receivable and current bank balances.

8.0 Commingling of funds, when not permitted.

- 8.1 A producer who does not have the express consent of his entities to commingle moneys with his personal funds shall hold the premium moneys separate from other funds in accordance with the following:
- 8.2 A producer who does not make immediate remittance to his entities may not deposit premiums in office operating accounts but shall keep the moneys in a separate bank account from which disbursement may not be made other than for the payment of premiums to the entities, the return of premiums to the insured or the transfer of commissions or the withdrawal of voluntary deposits.
- 8.3 Voluntary deposits in the premium account in excess of premiums collected and unpaid to entities may be made for the purpose of maintaining a minimum balance, to guarantee the adequacy of the account or for the purpose of the payment premiums to the entities in advance of their collection. These deposits may not be withdrawn except to the extent that the remaining balance is equal to the total of net premiums collected and unpaid to entities.
- 8.4 The deposit of a premium collection in a separate bank account may not be construed as a mingling by the producer of the net premium and of the commission portion of the premium. The commission portion of the premium may be withdrawn from the separate bank account at the discretion of the producer.
- 8.5 The maintenance in a separate bank account of at least the net balance of premiums collected and unpaid to the entities by producers operating under the "account current system" shall be construed as compliance with this section and with 18 Del.C. §§1706 (e) and 2304(7), if the funds so held are readily ascertainable from the books of account and records of producers.

9.0 Operating and Premium Accounts, Requirements

When both an operating and a premium account are maintained by producers under this section for purposes of segregating premiums collected, the premium account balance shall include funds sufficient to pay premiums collected and any amount delinquent or in dispute with the entity represented. Upon reconciliation of delinquent or disputed accounts, excess moneys remaining in the premium bank account may be withdrawn as if they had been voluntary deposits.

10.0 Deposit of Premiums Collected from Insureds

A producer may deposit premiums collected from insureds in an interest bearing account when the producer is not required to make an immediate remittance to the entity of premium moneys, if the

moneys are not placed in an account upon which a penalty may be levied against the principal for early withdrawal and/or if the moneys are placed in an account insured by the United States government or instruments secured by the United States government.

11.0 **Separability**

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

12.0 **Effective Date**

This regulation becomes effective on June 11, 2010.

13 DE Reg. 1281 (04/01/10)