

DEPARTMENT OF INSURANCE

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

FINAL

ORDER

Proposed Regulation 505 relating to Fiduciary Responsibilities for Producers was published in the *Delaware Register of Regulations* on April 1, 2010. The comment period remained open until May 3, 2010. There was no public hearing on proposed Regulation 505. Public notice of the proposed Regulation 505 in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comment was received from the Delaware Association of Insurance Agents & Brokers (DAIAB). The comment was centered on Section 10.0, dealing with deposits in interest-bearing accounts. DAIAB believes that the two options available for deposit of funds are too restrictive and suggests that a myriad of other accounts should be added to reflect the options that exist in the financial realm today.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

The requirements of the proposed Regulation 505 best serve the interests of the public and of producers and comply with Delaware law. Requiring the funds of insureds, that will not be immediately remitted to insurers, to be deposited in fully-insured bank accounts serves the purpose of keeping these funds secure. Adding additional options that may increase interest earned on the deposits for short periods of time do not serve the ultimate purpose of consumer protection.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.**, §§314, 1111 and 29 **Del.C.**, §§10113-10118 and the record in this docket, I hereby adopt Regulation 505 as may more fully and at large appear in the version attached hereto to be effective on June 11, 2010.

TEXT AND CITATION

The text of the proposed Regulation 505 last appeared in the *Register of Regulations* Vol. 13, Issue 11, pages 1281-1283.

IT IS SO ORDERED this 7th day of May 2010.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

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:

7.1.1 Monies held in a fiduciary capacity are reasonably ascertainable from the books of accounts and records of the producers.

7.1.2 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:

8.1.1 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 he entities, the return of premiums to the insured or the transfer of commissions or the withdrawal of voluntary deposits.

- 8.1.2 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.
- 8.1.3 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.
- 8.1.4 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.