

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER
Statutory Authority: 5 Delaware Code, Sections 121(b), 2202(b), 2304(c), and 3409
(5 **Del.C.** §§121(b), 2202(b), 2304(c), and 3409)
5 **DE Admin. Code** 2207, 2302, 3401 and 3402

PROPOSED

PUBLIC NOTICE

2207 Exemption of Licensed Lenders
2302 Exemptions
3401 Regulations Governing Revocable and Irrevocable Trust Agreements
3402 Surety Bond or Irrevocable Letter of Credit

Summary

The State Bank Commissioner proposes to amend four Regulations adopted in accordance with Title 5 of the Delaware Code. Regarding Title 5, Chapter 22 (Licensed Lenders), the proposed amendment to Regulation 2207 (Exemption of Licensed Lenders) deletes certain outdated provisions and specifies that all exemptions issued pursuant to 5 **Del.C.** §2202(b) shall expire on December 31 of each year. Regarding Title 5, Chapter 23 (Sale of Checks and Transmission of Money), the proposed amendment to Regulation 2302 (Exemptions) specifies that all exemptions issued pursuant to 5 **Del.C.** §2304(c) shall expire on December 31 of each year. Regarding Title 5, Chapter 34 (Preneed Funeral Contracts), the proposed amendments to Regulation 3401 (Operating Regulation) and Regulation 3402 (Surety Bond or Irrevocable Letter of Credit) clarify, streamline and update the existing regulations for ease of understanding and increased relevance to current licensee operations. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, and Chapter 101, Subchapter II.

Comments

A copy of the proposed amended regulations is being published in the June 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed amended regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before July 3, 2014. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulations

On or after July 3, 2014, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations 2207, 2302, 3401, and 3402, or make additional changes because of the public comments received.

2207 Exemption of Licensed Lenders

5 **Del.C.** §2202(b)
Formerly Regulation No.: 5.2202(b).0007
Effective Date: ~~June 11, 2004~~ Proposed

1.0 Purpose

1.1 This regulation governs the procedures and requirements for exemptions pursuant to 5 **Del.C.** §2202(b).

2.0 Definitions

For the purpose of this regulation, the following definitions apply:

“**Commissioner**” means the State Bank Commissioner.

“**Exempt Person**” means a person that has been granted an exemption from the Statute pursuant to 5 **Del.C.** §2202(b) and this regulation.

~~“Existing Exemption” means an exemption from the Statute granted before the effective date of this regulation.~~

“Person” means an individual, corporation, partnership, or any other business entity or group or combination of individuals however organized.

“Statute” means 5 Del.C. Ch. 22.

3.0 Applicability

- 3.1 This regulation and the Statute apply only to persons engaged in consumer credit transactions, including but not limited to mortgage lending secured by one to four family residential, owner occupied property located in Delaware and intended for personal, family or household purposes.
- 3.2 This regulation and the Statute’s licensing requirements do not apply to:
 - 3.2.1 Any person who makes 5 or less loans within any 12 month period;
 - 3.2.2 Any banking organization, as defined by 5 Del.C. §101;
 - 3.2.3 Any federal credit union;
 - 3.2.4 Any insurance company;
 - 3.2.5 Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any other applicable law of the State of Delaware; and
 - 3.2.6 Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any applicable law of the United States of America.
- 3.3 A person shall not be deemed to be transacting the business of lending money within the meaning of 5 Del.C. §2202 and shall not be subject to this regulation or the licensing requirements of the Statute solely because the person is a participating merchant as the term is used in the Statute.

4.0 Qualifications

- 4.1 An exempt person shall at all times maintain such financial responsibility, experience, character, and general fitness as to command the confidence of the community and to warrant belief that its business will be operated honestly, fairly, and efficiently within the purposes of the Statute.

5.0 Grant of Exemptions

- 5.1 Upon finding the qualifications of Section 4.0 of this regulation have been met, the Commissioner may grant an exemption to:
 - 5.1.1 Any person whose lending operations are regularly examined, either separately or as part of an examination of an affiliated company, by an agency of the State of Delaware or the United States of America, if that agency regulates banks.
 - 5.1.2 Any person exempt from federal taxation under 26 USC §501(c)(3), as amended.
 - 5.1.3 Any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute, including any person whose operations and financial condition are regularly examined by any other agency of the State of Delaware, the United States of America, or another state.

6.0 Nature of Exemption

- 6.1 An exemption granted pursuant to Section 5.1.1 and 5.1.2 of this regulation shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.
- 6.2 The Commissioner shall determine the nature and extent of any exemption granted pursuant to Section 5.1.3 of this regulation.

7.0 Application of the Statute to Exempt Persons

- 7.1 Unless the Commissioner specifies otherwise, Subchapter II and Subchapter III of the Statute shall apply to all exempt persons as if they were licensees.

8.0 Expiration

- 8.1 Except as otherwise provided in this regulation, exemptions shall expire one year from the date granted on December 31 of each year.

9.0 Application and Renewals

- 9.1 Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.
- 9.2 An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

10.0 Changed Information

- 10.1 Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

11.0 Extensions on License Applications

- 11.1 An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

12.0 Existing Exemptions

- ~~12.1 Existing exemptions shall expire on July 1, 2002.~~
- ~~12.2 Persons with existing exemptions may apply for a renewal of their exemption pursuant to this regulation at any time before June 30, 2002.~~
- ~~12.3 The provisions of all existing exemptions shall remain in effect until the exemption expires pursuant to subsection 12.1 of this regulation.~~

13.0 Suspension or Revocation

- 13.1 The Commissioner may suspend or revoke any exemption upon a finding that:
 - 13.1.1 The exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, any other state or the United States of America;
 - 13.1.2 Any fact or condition exists which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal;
 - 13.1.3 The exempt person has engaged in unfair or deceptive business activities or practices in connection with extensions of credit to consumers. Unfair or deceptive activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer; or
 - 13.1.4 The exempt person does not meet the qualifications specified in Section 4 of this regulation.
- 13.2 No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.
- 13.3 No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

14.0 Exemption Denials

- 14.1 If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written order to that effect which states the grounds for the denial. The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101. The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

15.0 Fees

- 15.1 The investigation fee for an application for an exemption shall be \$250.00 and shall be submitted with the application.
- 15.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.
- 15.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

2302 Exemptions

5 Del.C. §2318 §2304(c)

Effective Date: November 11, 2007 Proposed

1.0 Purpose

This regulation governs the procedures and requirements for exemptions pursuant to 5 Del.C. §2304(c).

2.0 Definitions

For the purpose of this regulation, the following definitions apply:

"**Commissioner**" means the State Bank Commissioner.

"**Exempt person**" means a person exempt from any of the requirements of the Statute pursuant to 5 Del.C. §2304(c) and this regulation.

"**Person**" means any individual, partnership, association, joint stock association or corporation, but does not include the United States government or the government of the State of Delaware.

"**Statute**" means 5 Del.C. Ch. 23.

3.0 General Exemption

- 3.1 Banks, trust companies, credit unions, building and loan associations and savings and loan associations, organized under the law of any state in the United States of America or the United States of America, which either are authorized to do business in the State of Delaware, or which act through a contractor or agent authorized to do business in this State are exempt from all requirements of the Statute. Nothing contained in this regulation shall be construed to enlarge or limit the rights that any of the persons listed in this Section 3.1 have under any existing law.
- 3.2 Agents of an exempt person are exempt from the Statute to the same extent as the exemption granted to their principal.
- 3.3 Persons exempt from the Statute pursuant to this section 3.0 are not subject to any other provisions of this regulation.

4.0 Grant of Exemptions

- 4.1 Upon finding the qualifications of Section 5.0 of this regulation have been met, the Commissioner may grant an exemption to:
 - 4.1.1 any person whose operations and financial condition with respect to the transmission of money and/or the sale or issuance of checks are regularly examined, either separately or as part of an examination of an affiliate, by an agency of the State of Delaware, another state, or the United States of America; or
 - 4.1.2 any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute.

5.0 Qualifications for Exemption

- 5.1 An exempt person shall at all times maintain:
 - 5.1.1 a net worth of at least \$100,000 computed in accordance with generally accepted accounting principles; and
 - 5.1.2 such financial responsibility, financial condition, financial and business experience, character, and general fitness as reasonably to warrant the belief that its business will be conducted honestly, fairly, equitably, carefully, and efficiently.
- 5.2 The Commissioner may investigate and consider the qualifications of the applicant for the exemption, including principals, officers and directors of an applicant, in determining whether the qualifications for an exemption have been met.

6.0 Nature of Exemption

An exemption shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.

7.0 Expiration

Except as otherwise provided in this regulation, exemptions shall expire ~~one year from the date granted on~~ December 31 of each year.

8.0 Application and Renewals

- 8.1 Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.
- 8.2 An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

9.0 Changed Information

Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

10.0 Extensions on License Applications

An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

11.0 Suspension or Revocation

- 11.1 The Commissioner may suspend or revoke any exemption upon a finding that:
 - 11.1.1 the exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, another state, or the United States of America;
 - 11.1.2 any fact or condition exists, which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal; or
 - 11.1.3 the exempt person has engaged in business activities or practices in connection with any business for which the exemption was granted, which could be deemed unfair or deceptive by nature of intent, including the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer.
- 11.2 No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.
- 11.3 No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

12.0 Exemption Denials

- 12.1 If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written notice to that effect which states the grounds for the denial.
- 12.2 The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.
- 12.3 The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

13.0 Fees

- 13.1 The investigation fee for an initial application for an exemption shall be \$250.00 and shall be submitted with the application.
- 13.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.
- 13.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

11 DE Reg. 693 (11/01/07)

1.0 Expiration and Renewal

All licenses under 5 Del.C. Ch. 34 shall expire on December 31 of each year. A renewal application must be submitted to the Commissioner before that date for a license to remain in effect.

2.0 Compliance with Applicable Laws

- 2.1 All licensees shall comply with 5 Del.C. Ch. 34, all regulations issued thereunder, and all other applicable State and federal statutes and regulations relating to preneed funeral contracts.
- 2.2 The manager and appropriate staff of each licensee shall familiarize themselves with all such statutes and regulations.
- 2.3 Each licensee shall maintain, either by paper copy or through electronic access, 5 Del.C. Ch. 34 and the following regulations:
 - 2.3.1 Regulation 101, Retention of Financial Institution Records;
 - 2.3.2 Regulation 3401, Operating Regulation; and
 - 2.3.3 Regulation 3402, Surety Bond or Irrevocable Letter of Credit.

3.0 Minimum Required Records

- 3.1 Each licensee shall maintain any records necessary to verify the licensee's compliance with 5 Del.C. Ch. 34, all regulations issued thereunder, and all other applicable State and federal statutes and regulations relating to preneed funeral contracts.
- 3.2 All such records shall be made available to the Commissioner's staff when requested.
- 3.3 Records may be maintained at any suitable location, but must be available within a reasonable period of time upon request.
- 3.4 All such records may be maintained by paper copy or in an electronic format.
- 3.5 All records shall be maintained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.
- 3.6 The Commissioner may grant written approval for variations from this section to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this section are satisfied and that the records will be readily available when requested.

4.0 Display of License

Each licensee shall prominently display its license issued under 5 Del.C. Ch. 34 in clear view of all customers.

45.0 Annual Statements to Preneed Contract Beneficiaries

- 45.1 At least once, annually, a ~~each~~ licensee shall ~~mail or deliver, to each party for whom such licensee holds a beneficiary of its preneed funeral contracts, or an appropriate representative of the beneficiary,~~ a statement containing, ~~at a minimum,~~ the following information:
 - 5.1.1 the name and address of the financial institution where the trust account for the contract is held;
 - 4.1.4 5.1.2 the ~~previous balance in the total amount held in that~~ trust account ~~or at the beginning balance for~~ of the statement period;
 - 4.1.2 5.1.3 the number and amounts of payments received ~~for~~ during the statement period;
 - 4.1.3 5.1.4 the amount of interest accrued ~~interest for~~ during the statement period; and
 - 4.1.4 5.1.5 the ~~"ending" or total account balance for~~ amount held in the trust account at the end of the statement period; and,
 - 4.1.5 the name and address of the financial institutions where the trust deposit is held.

6.0 Annual Statement to the Commissioner

- 6.1 Each licensee shall submit to the Commissioner on July 31st of each year a statement containing the following information for each of its preneed funeral contracts:

- 6.1.1 the name and address of the contract beneficiary and any appropriate representative of the beneficiary;
- 6.1.2 the name and address of the financial institution where the trust account for the contract is held;
- 6.1.3 the name and address of the trustee for the trust account;
- 6.1.4 the total amount held in the trust account as of June 30th; and
- 6.1.5 a certification from the financial institution that the information contained in the statement is true and accurate.

27.0 Disclosure Requirements for the Irrevocable Trust Documents

- 27.1 The trust document establishing ~~the an~~ irrevocable trust permitted by Section 3404 of Title 5 of the **Delaware Code** shall contain, ~~at a minimum, the following mandatory provisions:~~
 - 27.1.1 A provision ~~which expressly identifies stating that~~ the trust as is irrevocable ~~for the lifetime of the beneficiary;~~
 - 27.1.2 A provision ~~for the disposition of trust funds to an alternate trustee that upon the discontinuation of business or the inability to provide the contracted goods or services by the original trustee in accordance with the terms of the trust or a provision for the transfer of trust funds, to a new trustee, at the consumer's election, the funds held in the trust shall be transferred to either a specified successor trustee or a successor trustee selected by either the contract beneficiary, or an appropriate representative of the beneficiary;~~
 - 27.1.3 A provision that ~~in the event funds paid into if funds held by the trust are inadequate, at the time of the death of the contract beneficiary, to cover anticipated the beneficiary's funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary those expenses;~~
 - 27.1.4 A provision that ~~in the event the sum if the funds held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary the beneficiary's funeral expenses, the excess funds shall be paid to the beneficiary's estate of the beneficiary;~~
 - 27.1.5 A provision that the trustee may, from time to time, accept ~~periodic~~ monetary contributions to the trust, ~~provided that the principal sum contributed, exclusive of interest earned, shall not exceed \$10,000; and~~
 - 27.1.6 A provision ~~which shall state stating~~ "In no event shall the principal amount of the trust exceed \$10,000 ~~plus \$15,000, excluding accrued interest."~~

2 DE Reg. 295 (8/1/98)

3 DE Reg. 653 (11/1/99)

8.0 Examination Fees and Supervisory Assessments

- 8.1 The Commissioner may examine licensees pursuant to Section 122 of Title 5 of the **Delaware Code**. The costs of such examination are assessed in accordance with Section 127(a) of Title 5. A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 8.2 The Commissioner shall assess each licensee a supervisory assessment, which is due and payable on August 1 each year, in accordance with Section 127(b) of Title 5 of the **Delaware Code**.
- 8.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with Sections 127(a) and 127(b) of Title 5 of the **Delaware Code**.

9.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

3402 Surety Bond or Irrevocable Letter of Credit

5 Del.C. §§3409 and 3411

Effective Date: November 11, 2007 Proposed

1.0 Bond or Irrevocable Letter of Credit Required

A Each licensee shall file with the State Bank Commissioner (the "Commissioner") an original corporate surety bond or an irrevocable letter of credit in a form satisfactory to the Commissioner in accordance with 5 **Del.C.** §3411. The minimum amount of the surety bond or irrevocable letter of credit is based on the factors identified in that section.

2.0 Amount of Bond or Irrevocable Letter of Credit

- 2.1** A Each licensee shall obtain a surety bond or irrevocable letter of credit ~~in a minimum amount in accordance with the following table~~ based upon the maximum dollar value of the trust funds it held as a trustee during the twelve month period ending October 31 that precedes the calendar year for which the bond or irrevocable letter of credit is effective. A licensee who obtains a surety bond that is effective for more than one year or an irrevocable letter of credit shall annually review the amount of the surety bond or letter of credit, to ensure that the minimum required amount is maintained. The minimum required amount of the surety bond or irrevocable letter of credit shall be maintained according to the following table:

Maximum Dollar Value of Trust Funds Held by Licensee	Minimum Required Amount of Surety Bond or Irrevocable Letter of Credit
not more than \$50,000	\$50,000
\$50,001 - \$75,000	\$75,000
\$75,001 - \$100,000	\$100,000
\$100,001 - \$125,000	\$125,000
\$125,001 - \$150,000	\$150,000
\$150,001 - \$175,000	\$175,000
\$175,001 and over	\$200,000

- ~~3.0~~ **2.2** Subject to the \$200,000 cap, ~~The~~ Commissioner may require a licensee to obtain a larger surety bond or irrevocable letter of credit based upon the licensee's individual circumstances.

~~4.0~~ A licensee that obtains a surety bond or irrevocable letter of credit that is effective for more than one year shall review on November 1 of each year the dollar value of the trust funds it held during the previous twelve month period to ensure that the minimum required amount for its surety bond or irrevocable letter of credit is maintained for the following calendar year.

11 DE Reg. 693 (11/01/07)

17 DE Reg. 1168 (06/01/14) (Prop.)