

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

031 BUREAU OF INSURANCE

Chapter 540: PREMIUM TRUST ACCOUNT FIDUCIARY DUTIES

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SECTION 1. DEFINITIONS

- A. “Premium” is as defined in 24-A M.R.S. § 2403.
- B. “Return premium” is premium owed to the policyholder because of policy cancellation, rate adjustment, or coverage or benefit reduction.

SECTION 2. AUTHORITY AND PURPOSE

The purpose of this Rule is to prescribe, pursuant to 24-A M.R.S. §§ 212 and 1449, minimum standards and requirements regarding the fiduciary obligations of insurance producers.

SECTION 3. FIDUCIARY OBLIGATIONS

An insurance producer who is licensed or required to be licensed in this State, and who receives or holds premiums or return premiums for risks in this State, must comply with 24-A M.R.S. § 1449 and this Rule.

- A. An insurance producer shall receive and hold all premiums and return premiums as trust funds in a fiduciary capacity and not as his or her personal assets.
- B. In order to meet the fiduciary obligations of this Rule, an insurance producer shall set up one or more separate premium trust accounts in a national or state bank, savings institution, or credit union and maintain therein all premiums and return premiums received by the insurance producer until actually remitted to the insurer or other person entitled thereto.
- C. Under no circumstances shall an insurance producer place fiduciary funds in a personal or business operating account.
- D. The premium trust account must not be encumbered in any manner, including but not limited to pledging any funds in the account as collateral for a loan or other obligation.

SECTION 4. REQUIREMENTS FOR PREMIUM TRUST ACCOUNTS

- A. A premium trust account shall be in the name of the insurance producer or the producer's agency and include the words "premium trust account." Checks drawn on the trust account shall contain the insurance producer's or insurance agency's name and the words "premium trust account." If a producer or agency business name is used, it must be a name under which the producer or agency is licensed. Notwithstanding this subsection, insurance producers and agencies may continue to use supplies of noncomplying checks existing on the effective date of this Rule.
- B. A non-licensee may not be a signatory on a licensee's trust account, unless the non-licensee is an employee of the licensee and has specific written responsibility for the licensee's trust account.
- C. An insurance producer shall not deposit any funds other than premiums, commissions, and return premiums to a premium trust account, except as follows:
- (1) Funds contributed by or on behalf of the producer to the extent reasonably sufficient to pay bank charges;
 - (2) Funds an insurance producer may deem necessary for advancing premiums or establishing reserves for the paying of return premiums;
 - (3) Fees paid by or on behalf of the policyholder as permitted under 24-A M.R.S. § 1450(3);
 - (4) Nonadmitted premium taxes payable by the producer and premium tax refunds received by the producer; and
 - (5) Funds for contingencies that may arise in the course of receiving and transmitting premiums, return premiums, or other fiduciary funds.
- D. Disbursements or withdrawals from a premium trust account shall be made only for:
- (1) Charges imposed by the financial institution for operating the premium trust account;
 - (2) Payments of premiums and return premiums directly to the persons entitled thereto, including any amounts identified as relating to premium taxes on admitted insurance;
 - (3) Payments of earned compensation to the insurance producer, but only to the extent that the funds were held in the trust account as unearned compensation;
 - (4) Payments of earned compensation belonging to another insurance producer as provided under 24-A M.R.S. § 1450, but only to the extent

that the funds could otherwise be withdrawn as earned compensation under Paragraph (3);

- (5) Withdrawals of contributed reserve funds belonging to the producer, to the extent that they are no longer needed for the purposes for which they were contributed; and
 - (6) Transfers of fiduciary funds to another premium trust account which meets the requirements of this section.
- E. An insurance producer that is a business entity may use one or more premium trust accounts for premiums and return premiums received by its affiliated producers. The affiliated producers shall deposit these funds directly into the premium trust account of the business entity.
- F. An insurance producer who is employed by another insurance producer may, if authorized by the appointing insurer, deposit premiums and return premiums into the premium trust account of the employing insurance producer.
- G. A premium trust account may be, but is not required to be, an interest-bearing account. Absent any agreement to the contrary between the insurance producer and an affected customer or insurer, the producer may use interest to offset bank charges or may treat the interest as reserve funds that may be withdrawn when no longer needed for that purpose.
- H. A nonresident producer may fulfill his or her fiduciary obligation by holding Maine fiduciary funds in a trust account maintained in compliance with the requirements of the producer's state of residence and the requirements of the state where the account is maintained if different, if the Superintendent determines that those requirements provide a level of protection substantially equivalent to the requirements of this Rule.

SECTION 5. RECORDKEEPING REQUIREMENTS

- A. Adequate records shall be maintained to establish ownership of all funds in the trust account, from whom they were received, and for whom they are held.
- B. All accounting records relating to the business of insurance shall be maintained in a manner that facilitates an audit.
- C. An insurance producer shall maintain, and make available to the Superintendent upon request, all records of each transaction concerning each premium trust account that the producer keeps under this Rule, as well as any related records, for six years from the date of the transaction.

SECTION 6. PENALTIES

In addition to any other penalties provided by the laws of this State, a person who violates this Rule is subject to disciplinary action pursuant to Title 24-A M.R.S. § 12-A.

SECTION 7. SEVERABILITY

If any section or provision of this Rule is adjudged invalid for any reason, the judgment shall not impair or invalidate any other section or provision of this Rule, and the Rule shall otherwise remain in full force and effect.

SECTION 8. EFFECTIVE DATE

This Rule is effective April 3, 2016. Licensees shall comply with this Rule within 90 days of its effective date.