

1733. All funds received by any person acting as a licensee under this chapter, Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), or Chapter 7 (commencing with Section 1800), as premium or return premium on or under any policy of insurance or undertaking of bail, are received and held by that person in his or her fiduciary capacity. Any such person who diverts or appropriates those fiduciary funds to his or her own use is guilty of theft and punishable for theft as provided by law. Any premium that a premium financier agrees to advance pursuant to the terms of a premium finance agreement shall constitute fiduciary funds as defined in this section only if actually received by a person licensed in one or more of the capacities herein specified.

1734. This section applies to any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733. If fiduciary funds, as defined in Section 1733, are received by such person, he shall:

(a) Remit premiums, less commissions, and return premiums received or held by him to the insurer or the person entitled thereto, or

(b) Maintain such fiduciary funds on California business at all times in a trustee bank account or depository in California separate from any other account or depository, in an amount at least equal to the premiums and return premiums, net of commissions, received by him and unpaid to the persons entitled thereto or, at their direction or pursuant to written contract, for the account of such persons. As used in this section, "trustee bank account or depository" includes but is not limited to a checking account, demand account, or savings account, each of which shall be designated as a trust account. However, such person may commingle with such fiduciary funds in such account or depository such additional funds as he may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return commissions or for such contingencies as may arise in his business of receiving and transmitting premium or return premium funds, or

(c) Maintain such fiduciary funds pursuant to Section 1734.5.

1734.5. (a) (1) If fiduciary funds, as defined in Section 1733, are received by any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and the funds are not remitted, or maintained pursuant to subdivisions (a) and (b) of Section 1734, the funds shall be maintained in any of the following:

(A) United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest.

(B) Certificates of deposit of banks or savings and loan associations licensed by any state government within the United States, or the United States government.

(C) Repurchase agreements collateralized by securities issued by the United States government.

(D) Either of the following:

(i) Bonds and other obligations of this state or of any local agency or district of the State of California having the power,

without limit as to rate or amount, to levy taxes or assessments upon all property within its boundaries subject to taxation or assessment by the local agency or district to pay the principal and interest of the obligations.

(ii) Revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by this state, or a local agency or district or by a department, board, agency, or authority thereof.

(2) The bonds and obligations described in subparagraph (D) of paragraph (1) shall either have maturities of not more than one year or afford the holder of the obligation the unilateral right to redeem the obligation from its issuer within one year from date of purchase at an amount equal to or greater than its par value, and the bonds and obligations shall be required to be rated at least Aaa, MIG-1/VMIG-1, or Prime-1 by Moody's Investor Service, Inc., or AA, SP-1, or A-1 by Standard and Poor's Corporation.

(3) For the fiduciary funds maintained as provided in paragraph (1), the bonds, certificates, obligations, certificates of deposit, and repurchase agreements shall be valued on the basis of their acquisition cost.

(b) As a condition to maintaining the fiduciary funds pursuant to this section, a written agreement shall be obtained from each and every insurer or person entitled thereto authorizing the maintenance and the retention of any earnings accruing on the funds.

(c) Evidence of the funds shall be maintained on California business by a bank, as defined in Section 102 of the Financial Code, or a savings association, as defined in Section 143 or 5102 of the Financial Code, in a custodian or trust account in California, separate from any other funds, in an amount at least equal to the premiums and return premiums, net of commissions received by him or her and unpaid to the persons entitled thereto, or, at their discretion or pursuant to a written contract, for the account of these persons. However, the person may commingle with the fiduciary funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies that may arise in his or her business of receiving and transmitting premium or return premium funds.

(d) The commissioner shall not have jurisdiction over any disputes arising between parties concerning the maintenance of fiduciary funds pursuant to this section. However, this subdivision shall not otherwise affect the authority granted to the commissioner over fiduciary funds by other provisions of this code, or regulations adopted pursuant thereto. As used in this subdivision, "parties" shall not include the commissioner.

(e) Investment losses to the principal of fiduciary funds maintained pursuant to this section are the responsibility of the person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and any obligation to insurers or other persons entitled to the fiduciary funds shall in no way be diminished due to any loss in the value to the principal of the fiduciary funds held pursuant to this section.

1735. (a) As used in this section, a **managing general agent** is a licensed property broker-agent and casualty broker-agent, or a life agent to whom all of the following apply:

(1) Has a written management contract and an appointment on file with the commissioner in accordance with Section 1704, which appointment is then in force, with one or more admitted insurers covering business transacted by the insurer in a substantial portion of the State of California.

(2) Under the contract specified in paragraph (1), manages the transaction of either all or one or more of the classes of insurance written by those insurers in that territory or the transactions therein by those insurers under a specified fictitious underwriter's name.

(3) Has the power to appoint, supervise, and terminate the appointment of local agents in that territory.

(4) Has the power to accept or decline risks.

(5) Collects premium moneys from producing broker-agents and remits those moneys to those insurers pursuant to the account current system.

(b) The managing general agent shall, with respect to any principals for whom fiduciary funds are held, comply with Section 1734.

1735.5. A property broker-agent, casualty broker-agent, or surplus line broker may offset funds due an insured for return premiums on any policy against amounts due him or her from the same insured for unpaid premiums on the same or any other policy. Any insurer may pay return premiums to any property broker-agent or any casualty broker-agent for that purpose. This section shall not invalidate an assignment of return premium made concurrently with policy issuance as security for financing that premium, nor the right of the assignee, or his or her assign, to enforce the assignment as a prior claim.

1736. If any acts are forbidden or conduct prescribed by any provisions of this code, such acts shall not be performed and such conduct shall be followed by both the organization and by any person named to exercise the power and perform the duties under any license issued to such organization.

1736.5. (a) Every licensee and applicant shall promptly reply in writing to an inquiry from the commissioner relative to an application for, or the retention or renewal of, a license, or an investigation relating to a consumer complaint or a matter relating to a producer licensing background change reporting requirement under Section 1729.2. The commissioner may revoke, suspend, or refuse to issue or renew a license if the licensee or applicant does not promptly reply in writing to an inquiry from the commissioner.

(b) For purposes of this section, "promptly reply" means to provide a written response to the inquiry that is received by the commissioner no later than 21 days after the date the inquiry was mailed or otherwise communicated to the applicant or licensee.

(c) For purposes of this section, the term "licensee" and "applicant" have the same definitions as those contained in paragraph (3) of subdivision (c) of Section 1729.2, and the licenses covered by this section are the same as those covered by paragraph (1) of subdivision (c) of Section 1729.2.