

Title 31
MARYLAND INSURANCE ADMINISTRATION

Subtitle 03 AGENTS, BROKERS, AND OTHER INSURANCE
PROFESSIONALS

Chapter 03 Fiduciary Responsibility of Insurance Agents and
Brokers: Premium Accounts—Commingling
of Funds

Authority: Insurance Article, §§2-109 and 10-126, Annotated Code of Maryland

.01 General Requirements.

A. Every insurance agent and broker acting as such in this State who does not have the express written consent of his or its principals to mingle premium monies with his or its personal funds shall hold the premium monies separate from other funds in accordance with this regulation.

B. Agents and brokers who do not make prompt remittance to principals and assureds of the funds shall deposit them in one or more appropriately identified accounts in a bank or banks authorized to do business in this State or subject to jurisdiction of this State, from which withdrawals may not be made except as hereinafter specified (any such account is hereinafter referred to as a "premium account").

C. An agent or broker who makes remittances to principals or assureds of the funds not later than the close of the fifth business day following receipt of the funds shall be deemed to have made prompt remittance and need not maintain a premium account for the funds. The term "business day" does not include Saturdays, Sundays, or legal holidays.

D. Deposits in a premium account in excess of aggregate net premiums, return premiums, and deposits received but not remitted may be made to maintain a minimum balance, to guarantee the adequacy of the account, or to pay premiums due but uncollected (any such deposit is hereinafter referred to as "a voluntary deposit").

E. Withdrawals.

(1) Withdrawals from a premium account may not be made other than for the following purposes:

(a) Payment of premiums to principals.

(b) Transfer to an operating account of bank interest, if the principals have consented to it in writing.

(c) Transfer to an operating account of commissions either actual or average. If average commissions are used, the agent or broker shall maintain on file in his office at all times a letter from each principal stating the percentage of the average commission.

(d) Withdrawal of voluntary deposits.

(e) Payment of return deposits to assureds.

(f) Payment of return premiums to assureds in the ordinary course of business when a written agreement with the principal authorizing this practice exists.

(2) However, a withdrawal may not be made if the balance remaining in the premium account thereafter is less than aggregate net premiums, return premiums, and deposits received but not remitted.

F. Deposit of a premium in a premium account may not be construed as a commingling of the net premium and of the commission portion of the premium.

.02 Account Current System.

In the case of an agent or broker operating under an account current system, maintenance at all times in one or more premium accounts of at least the net balance of premiums as determined by either actual or average commissions, return premiums, and deposits received but not remitted, shall be construed as compliance with this chapter, provided that the funds so held for each principal are readily ascertainable from the agent's or or broker's records.

.03 Substantial Interest.

In those instances when the officers, directors, or principal management of an insurer have a substantial interest in either the conduct or operation of the agency or brokerage business, or when the officers, directors, or principal management of an agency or brokerage business have a substantial interest in the conduct or operation of the insurer, a consent letter to the agency or brokerage business, by the insurer, may not be permitted, and separate accounts shall be maintained.

.04 Form of Letter of Consent.

The letter of consent from principals to agents and brokers authorizing the commingling of funds shall be on the stationery of the principal and shall contain the following minimum language:

"Consent is hereby given to commingle funds in your hands which are payable to us with other monies which you own or hold, in accordance with the provisions of COMAR 31.03.03 of the Maryland Insurance Administration. If the funds are deposited in an appropriate interest bearing account, you are authorized to withdraw the interest for your own use.

As part of this consent, however, we shall require that all funds payable to us, will at all times be ascertainable from an examination of your books and records.

The consent herein given shall remain in effect until cancelled by us upon not less than 30 days' written notice."

.05 Cancellation of Letter of Consent.

If the Principal elects to cancel any letter of consent, a copy of the cancellation notice shall be sent to the Insurance Administration, unless the cancellation notice is concurrent with the termination of the account of the agency or brokerage business.

.06 Severability.

If any section of this chapter or its application to any person or circumstances is held unauthorized by law, the remaining sections of the chapter and the application of the provisions to other persons or circumstances may not be affected thereby.

Administrative History

Effective date: January 1, 1967

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