

CHAPTER 17C
INSURANCE PRODUCER STANDARDS
OF CONDUCT: MANAGEMENT
OF FUNDS

Authority

N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-26 et seq.

Source and Effective Date

R.2005 d.237, effective June 21, 2005.
See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

Chapter Expiration Date

Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, expires on June 21, 2010.

Chapter Historical Note

Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, was adopted as R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Pursuant to Executive Order No. 66(1978), Chapter 17C, Insurance Producer Standard of Conduct: Management of Funds, was readopted as R.1995 d.60, effective December 30, 1994. See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Pursuant to Executive Order No. 66(1978), Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, was readopted as R.2000 d.44, effective December 30, 1999. See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, was readopted as R.2005 d.237, effective June 21, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL REQUIREMENTS

11:17C-1.1 Purpose and scope

This chapter sets forth standards of conduct for licensed insurance producers, including, but not limited to, limited line credit insurance producers, surplus lines insurance producers, and limited lines insurance producers, concerning the man-

agement of funds and general record-keeping for all insurance related transactions, for which a New Jersey insurance producer license of any kind is required, in implementation of N.J.S.A. 17:22A-40.

Amended by R.2005 d.237, effective July 18, 2005.
See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).
Rewrote the section.

11:17C-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Business day” means all days except Saturdays, Sundays and State and Federal holidays.

“Commissioner” means the Commissioner of the Department of Banking and Insurance of the State of New Jersey.

“Department” means the New Jersey Department of Banking and Insurance.

“Financial institution” means a Federal or State chartered bank, savings bank, or savings and loan institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC).

“Insurance producer” means a person required to be licensed under the laws of the State to sell, solicit or negotiate insurance.

“Insured” means an applicant for insurance or a policyholder.

“Trust account” means a special fiduciary account established and maintained by an insurance producer pursuant to the requirements of this chapter.

“Voluntary deposit” means a deposit in a trust account in excess of aggregate net premium, premiums due the insured and deposits, received but not remitted, made to maintain a minimum balance or to guarantee the adequacy of the account(s).

Amended by R.2000 d.44, effective February 7, 2000.
See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Inserted “Commissioner” and “Department”.
Amended by R.2002 d.354, effective November 4, 2002.
See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).
Rewrote “Insurance producer”.

11:17C-1.3 Penalties

(a) The Commissioner shall impose penalties for violations of this chapter in accordance with the provisions of N.J.S.A. 17:22A-26 et seq. and any other applicable law.

(b) For the purposes of determining the existence of a violation and assessing a penalty under this chapter, a separate

violation shall be deemed to exist, and a separate penalty therefor shall be assessed, for each violation of the provisions of this chapter.

Amended by R.2002 d.354, effective November 4, 2002.
See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).
In (a), amended the N.J.S.A. reference.

11:17C-1.4 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SUBCHAPTER 2. RULES CONCERNING MANAGEMENT OF FUNDS

11:17C-2.1 Commingling of funds

(a) All premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer's own use, or illegally withheld by the licensee.

(b) All premium funds shall be segregated and not in any manner commingled with any other funds of the insurance producer, except as may be permitted by this chapter.

Case Notes

Partial Summary Decision (2006 N.J. AGEN LEXIS 552) adopted, which concluded that licensee's submission of dishonored checks violated the remittance standards of N.J.A.C. 11:17C-2.1(a) and N.J.A.C. 11:17C-2.2, and consequently was a violation of N.J.S.A. 17:22A-40(a)(2), (4) and (8). *Bakke v. Prime Ins. Syndicate*, OAL Dkt. No. BKI 1168-05, 2006 N.J. AGEN LEXIS 509, Final Decision (May 8, 2006).

Violations warranted revocation of licenses. Department of Insurance v. Gelfand, Inc., 93 N.J.A.R.2d (INS) 61.

11:17C-2.2 Remittance standards

(a) All premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required or provided by any of the following:

1. The insurance producer's contract with the insurer or written agreement with the insured;
2. Any controlling statute or administrative rule; or
3. The rules of any residual market mechanism created by or pursuant to any statute.

(b) All premiums due the insured shall be paid to the insured or credited to the insured's account within five business days after receipt by the insurance producer from the insurer or other insurance producer or premium finance company.

1. If the return premium is to be credited to the insured's account, the credit shall be shown and applied to the next billing statement sent to the insured.

2. If the credit is to be held on the insured's account and the account reflects a credit balance, the insurance producer shall send monthly written notification to the insured which clearly reflects a credit owed to the insured and shall be paid to the insured upon his demand.

(c) All title insurance settlement funds shall be disbursed within five business days after settlement except as determined by the parties at settlement.

(d) Cancellation for nonpayment of a premium where the insurance producer of record has advanced the premium shall follow the written request of the insurance producer who has advanced such funds to the insurer. The written request shall be signed by the insurance producer, setting forth the amount of money advanced by the insurance producer, the amount of money paid by the insured to the insurance producer, the provisions contained in the agreement between the insured and insurance producer as to payments, and facts concerning the breach of said agreement by the insured. A copy of the written request shall be mailed to the insured at the time that it is submitted to the insurer.

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

In (b), added a reference to premium finance companies at the end of the introductory paragraph.

Case Notes

Partial Summary Decision (2006 N.J. AGEN LEXIS 552) adopted, which concluded that the president and partial owner of the insurance producer at issue was responsible for the conduct of the business of the company in accordance with N.J.A.C. 11:17A-4.10 and N.J.A.C. 11:17A-1.6(c), no matter who in the company may have actually failed to transmit premiums to insurers, return premiums to insureds, and obtain insurance coverage for its customers, in violation of N.J.A.C. 11:17C-2.2(a) and (b); by violating these insurance remittance laws of New Jersey, the licensee was also in violation of N.J.S.A. 17:22A-40(a)(2), (4) and (8). *Bakke v. Prime Ins. Syndicate*, OAL Dkt. No. BKI 1168-05, 2006 N.J. AGEN LEXIS 509, Final Decision (May 8, 2006).

Partial Summary Decision (2006 N.J. AGEN LEXIS 552) adopted, which concluded that licensee's submission of dishonored checks violated the remittance standards of N.J.A.C. 11:17C-2.1(a) and N.J.A.C. 11:17C-2.2, and consequently was a violation of N.J.S.A. 17:22A-40(a)(2), (4) and (8). *Bakke v. Prime Ins. Syndicate*, OAL Dkt. No. BKI 1168-05, 2006 N.J. AGEN LEXIS 509, Final Decision (May 8, 2006).

Sales license suspended by Department of Insurance for multiple violations, including failure to remit premium payments to insurer. *Pender v. Department of Insurance*, 96 N.J.A.R.2d (INS) 48.

Soliciting automobile insurance without forwarding premiums to servicing carrier warranted revocation of insurance producer license. *Fortunato v. Strauss*, 95 N.J.A.R.2d (INS) 20.

11:17C-2.3 Trust account

(a) An insurance producer shall establish and maintain a trust account into which shall be deposited cash, checks and

other instruments payable to the insurance producer under the following circumstances:

1. When an insurance producer holds any premiums for more than five business days before remitting the premiums to an insurer or other insurance producer, pursuant to N.J.A.C. 11:17C-2.2(a)1 through 3; or

2. When an insurance producer deposits any collected premiums into a financial institution account or other investment, or otherwise uses the premiums, even though the premiums are remitted within five business days.

(b) The account shall be designated a "Trust Account" on the bank records and those words shall be displayed on the face of the checks on that account.

(c) The trust account shall be a separate account from that required for the surplus lines guaranty fund.

(d) Non-premium monies received by the insurance producer for soliciting, negotiating, effecting, procuring, renewing, continuing or binding policies of insurance may be deposited into the trust account. Examples of non-premium monies include, but are not limited to, service fees, policy fees, late charges, inspection fees and surplus lines premium taxes.

(e) Any insurance producer who is required to maintain a trust account pursuant to (a) above shall establish and maintain a trust account in a financial institution as defined in this chapter. Any resident insurance producer required to maintain a trust account shall maintain such trust account in one or more financial institutions either:

1. Located within this State and subject to the jurisdiction of the New Jersey courts; or

2. Located outside this State, if the financial institution confirms, in a format approved by the Commissioner, that it will consent to the jurisdiction of New Jersey courts and the Department, including complying with and abiding by subpoenas and orders issued by the Department, to the same extent that New Jersey courts and the Department have jurisdictional oversight of insurance agency deposit accounts held in financial institutions located within this State, and provided that the financial institution is not transacting trust business as defined by N.J.S.A. 17:9A-316D(2) within this State without a certificate of authority in accordance with N.J.S.A. 17:9A-316.

(f) An insurance producer may place trust account funds in interest bearing or income producing assets and retain the interest or income thereon provided the nature of the account has previously been disclosed to the principal and the insurance producer has secured from the principal a written authorization for the investment of the money and the retention of any earnings thereon.

(g) The following disbursements may be lawfully withdrawn from the trust account:

1. Non-premium monies received by the insurance producer in connection with soliciting, negotiating, effecting, procuring, renewing, continuing or binding policies of insurance;

2. Net or gross premium remittances due other insurance producers or insurers;

3. Claim payments or reinsurance premiums for transfer to another trust account when authorized by an insurer;

4. Premiums due insureds;

5. Commissions due the insurance producer, net any financial institution charge or commission due another insurance producer, provided that commissions are withdrawn only on premiums deposited into the trust account;

6. Interest which the insurance producer is authorized to retain pursuant to this chapter;

7. Voluntary deposits; and

8. Funds for investment made pursuant to (f) above.

(h) Disbursements made pursuant to (g)2 and 4 above shall be made payable to the insurance producer or another insurance producer, the insurer or the insured, as the case may be.

(i) The trust account balance in the financial institution shall at all times be at least equal to the amount deposited less lawful withdrawals, except where the sole reason for the deficiency is the failure by a bank to honor checks of insureds or prospective insureds accepted in good faith as payment of premiums. If the balance in the financial institution is less than the amount deposited less lawful withdrawals, the insurance producer shall be deemed to be in violation of this chapter and shall be subject to penalties as provided by N.J.A.C. 11:17C-1.3.

Amended by R.2004 d.127, effective April 5, 2004.
See: 35 N.J.R. 3549(a), 36 N.J.R. 1782(a).

Rewrote (e).

Amended by R.2005 d.237, effective July 18, 2005.
See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

In (a), amended the N.J.A.C. reference.

Case Notes

Where undisputed facts showed that licensee intentionally destroyed his clients' applications and premium payments, issued checks that were returned for insufficient funds, failed to remit premium payments, led his clients to believe that they had insurance coverage, commingled funds, failed to maintain a trust account, and failed to notify the Commissioner of his entry into a Letter of Consent with the NASD, licensee's low standards of operation, recordkeeping, and total disregard for insurance producer standards of conduct demonstrated that licensee was unfit to hold an insurance producer's license; therefore, the Commissioner affirmed the ALJ's decision that licensee's insurance producer license should be revoked and concurred that N.J.A.C. 11:17D-2.7 et seq., which bars reinstatement of the license until five years after an order of revocation, should apply notwithstanding that the license had earlier lapsed from non-renewal. *Goldman v. Erwin*, OAL Dkt. No. BKI 4573-06, 2007 N.J. AGEN LEXIS 995, Final Decision (September 17, 2007).

11:17C-2.4 Receipts

(a) Each insurance producer shall issue a receipt for each premium for any payment, premium deposit or installment payment which is submitted by personal delivery or when a receipt is requested, and shall maintain a copy of each receipt issued. The receipt shall be furnished at the time payment is tendered. For title insurance only, unless a receipt is specifically requested, a settlement statement with the file number denoted shall suffice in lieu of a receipt.

(b) Each receipt and receipt book maintained by an insurance producer shall:

1. Be sequentially prenumbered or otherwise provide documentation of the sequence in which the receipts are issued;
2. Be clearly signed by the insurance producer or his or her authorized employee, and the name of the insurance producer shall be typed or legibly printed below the signature;
3. Indicate the name of the insured;
4. Indicate the name of the insurance company when known, or the name of the residual market mechanism or other insurance producer, if applicable;
5. Indicate the name, address and telephone number of the insurance agency;
6. Indicate the date and type of coverage;
7. Indicate the date of transaction;
8. Indicate the purpose of the payment if it is other than a premium payment; and
9. Indicate the amount of remittance.

(c) The requirements of (b)3 and 6 above shall not apply to receipts which are a part of and attached to the original application for insurance.

(d) Each insurance producer shall be responsible for the care, custody, and security of receipt books in the following manner:

1. Receipt books shall be maintained at a business address on file with the Department of Insurance;
2. Every receipt shall be accounted for by the insurance producer; and
3. Completed receipt books shall be retained for a minimum of five years from the date of completion.

(e) Any document other than a receipt or receipt book which contains or provides the Department and payee with ready access to the requirements in (b) above shall be considered to satisfy the requirements of this section so long as a record is maintained in accordance with the provisions of this section.

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

In (b)1, substituted "prenumbered" for "numbered" following "sequentially".

11:17C-2.5 Minimum recordkeeping requirements

(a) Each insurance producer shall maintain accurate books and records reflecting all insurance-related transactions in which the insurance producer or his employees take part in accordance with the standards set forth in this chapter. These records may be maintained by either separate books of record or by one or more consolidated books of record.

1. All books and records shall consist of sequentially numbered pages and shall be maintained in such a manner that they can be produced for examination at any time.
2. Appropriate and required entries shall be made at least once every 30 days.

(b) Each licensee shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection with an insurance transaction, including, but not limited to: premiums; service fees; placement fees; inspection fees; motorclub fees; premium taxes; transfers and disbursements from a trust account; and all transactions concerning, including the balance of, all interest bearing accounts. The minimum information required to be maintained in the register includes the following:

1. The date monies are received, deposited, disbursed or withdrawn;
2. The amount of money received, deposited, disbursed or withdrawn;
3. An itemized record of the allocation of the funds;
4. The name of the insured, insurance producer, insurer or other account to or from whom monies are disbursed or received pursuant to N.J.A.C. 11:17C-2.4(b);
5. The policy number or binder number;
6. The receipt number, when available; and
7. The method of payment, such as, cash, check, money order or draft, or credit card, charge card, debit card or direct account deduction pursuant to N.J.A.C. 11:1-24.

(c) If the premium amount received or disbursed differs with the amount billed, the insurance producer shall prepare a written record of the discrepancy which shall be maintained with the relevant entry in the register for the period of time required by N.J.A.C. 11:17C-2.6(a).

(d) For each disbursement, the number of the check shall be recorded in the register.

(e) If the disbursement is a commission payment to the insurance producer or another insurance producer, the disbursement shall be supported by a written record of the following:

1. The name of the insured;
2. The name of the insurer;
3. The policy number; and
4. The net commission, which shall not be greater than the amount of the disbursements recorded in the register.

(f) All entries for receipts and disbursements shall be supported by evidential matter as provided in (b), (d) and (e) above. The evidential matter shall be referenced in the entry so that it may be traced for verification.

(g) Each insurance producer shall prepare and maintain a monthly reconciliation of the trust account.

(h) Each insurance producer shall maintain a file for each client or customer which shall continue to be maintained for a period of at least five years after the termination of coverage. The minimum items required to be maintained in the file shall include the following:

1. A copy of each application for insurance;
2. The name of any other insurance producer not employed by the insurance producer maintaining the record who handled any transaction or part thereof;
3. The insurance premium financing agreement, if any, and the name of the lender;
4. All correspondence received or sent with respect to any insurance or insurance related transaction; and
5. All receipts evidencing payment by credit card, charge card, debit card, or direct account deduction, as permitted pursuant to N.J.A.C. 11:1-24.

Amended by R.1998 d.276, effective June 1, 1998.

See: 29 N.J.R. 3588(a), 30 N.J.R. 2003(a).

Rewrote (b)7 and added a new (h)5.

Case Notes

Where undisputed facts showed that licensee intentionally destroyed his clients' applications and premium payments, issued checks that were returned for insufficient funds, failed to remit premium payments, led his clients to believe that they had insurance coverage, commingled funds,

failed to maintain a trust account, and failed to notify the Commissioner of his entry into a Letter of Consent with the NASD, licensee's low standards of operation, recordkeeping, and total disregard for insurance producer standards of conduct demonstrated that licensee was unfit to hold an insurance producer's license; therefore, the Commissioner affirmed the ALJ's decision that licensee's insurance producer license should be revoked and concurred that N.J.A.C. 11:17D-2.7 et seq., which bars reinstatement of the license until five years after an order of revocation, should apply notwithstanding that the license had earlier lapsed from non-renewal. *Goldman v. Erwin*, OAL Dkt. No. BKI 4573-06, 2007 N.J. AGEN LEXIS 995, Final Decision (September 17, 2007).

11:17C-2.6 Record maintenance and examination; electronic recordkeeping

(a) All required books and records of account, including bank records, shall be maintained for a period of five years after the termination of coverage. With respect to title insurance only, to the extent that the provisions of this section are in conflict with N.J.S.A. 17:46B-9, the latter shall be deemed to apply.

(b) All records, books and documents required to be maintained by the provisions of this chapter shall, upon his or her request, be produced for examination by the Commissioner or his or her duly authorized representatives.

(c) The books and records required by this chapter to be maintained may be maintained electronically if the following conditions are met:

1. That all of the elements required by this chapter to be maintained are contained in the electronic system;
2. That, upon the request of the Department, the electronically kept records can be reproduced in hardcopy; and
3. That electronic back ups are produced daily and, at least every 30 days, the records maintained electronically are reproduced and stored off-site.

Amended by R.1994 d.160, effective March 21, 1994.

See: 26 N.J.R. 328(a), 26 N.J.R. 1351(a).

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Rewrote (c)3.