

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

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:22A-1 et seq.,
 17:29B-7 and 17B:30-13 and 15.

Source and Effective Date

R.2000 d.44, effective December 30, 1999.
 See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Executive Order No. 66(1978) Expiration Date

Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, expires on December 30, 2004.

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 17A, Insurance Producer Standards of Conduct: Management of Funds, was readopted as R.2000 d.44, effective December 30, 1999. 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 concerning the management of funds and general record-keeping for all insurance related transactions, for which a New Jersey insurance producer license is

required, in implementation of N.J.S.A. 17:22A-17a(5), (15) and (17) and 17c.

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

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

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)1-5; 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.