

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.2011 d.027, effective December 17, 2010.
 See: 42 N.J.R. 1470(a), 43 N.J.R. 189(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, expires on December 17, 2017. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, was adopted as new rules by 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 Standards 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: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, was readopted as R.2011 d.027, effective December 17, 2010. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL REQUIREMENTS

- 11:17C-1.1 Purpose and scope
- 11:17C-1.2 Definitions
- 11:17C-1.3 Penalties
- 11:17C-1.4 Severability

SUBCHAPTER 2. RULES CONCERNING MANAGEMENT OF FUNDS

- 11:17C-2.1 Commingling of funds
- 11:17C-2.2 Remittance standards
- 11:17C-2.3 Trust account
- 11:17C-2.4 Receipts
- 11:17C-2.5 Minimum recordkeeping requirements
- 11:17C-2.6 Record maintenance and examination; electronic recordkeeping

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 management 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

Respondent broker's numerous criminal acts of misappropriation of insurance premiums established his bad faith and, contrary to his assertion that his guilty plea merely established actions were taken, the plea also established his criminal intent. *Comm'r of Banking & Ins. v. Garden State Brokers*, OAL Dkt. No. BKI 3857-06, 2009 N.J. AGEN LEXIS 1210, Final Decision (December 1, 2009).

Revocation of insurance producer licenses was proper where respondents, an individual and her company, failed to deposit and maintain premium funds totaling \$62,352.76 received from insurance consumers in a dedicated trust account and commingled the monies with general operating funds in a bank account improperly used for personal expenses and which fell out-of-trust; although the ALJ properly concluded that respondents violated N.J.A.C. 11:17C-2.3, the ALJ should have also concluded that respondents violated N.J.A.C. 11:17C-2.1, which explicitly proscribes the commingling of premium funds (modifying 2008 N.J. AGEN LEXIS 758). *Goldman v. Montesinos*, OAL Dkt. No. BKI 12544-07, 2008 N.J. AGEN LEXIS 1022, Final Decision (September 19, 2008).

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

Respondents received insurance premium monies totaling \$911,420.02 on behalf of 13 insureds but failed to remit the premium monies and failed to secure the purchased insurance coverages, a violation of N.J.S.A. 17:22A-17a(1), (4), (5), and (20) and N.J.A.C. 11:17A-4.10, 11:17C-2.1(a) and 11:17C-2.2(a). *Comm'r of Banking & Insurance v. Garden State Brokers*, OAL Dkt. No. BKI 3857-06, 2009 N.J. AGEN LEXIS 1210, Final Decision (December 1, 2009).

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). 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).