

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

Authority

N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22A-1 et seq.,
17:29B-7, and 17B:30-13 and 15.

Source and Effective Date

R.1995 d.60, effective December 30, 1994.
See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Executive Order No. 66(1978) Expiration Date

Chapter 17C, Insurance Producer Standards of Conduct: Management of Funds, expires on December 30, 1999.

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 was readopted as R.1995 d.60. 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.

“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 any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined at N.J.S.A. 17:22A-2.

“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).

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-1 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.

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 misappro-

riated, 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.

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).

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.

(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 located within this State and subject to the jurisdiction of the New Jersey courts.

(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;