

State of Delaware



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Department of Insurance AGENTS' BULLETIN NO. 2

DELAWARE FIDUCIARY FUND REQUIREMENTS

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I. PURPOSE:

The purpose of this bulletin is to prescribe the Fiduciary Fund Requirements of the Delaware Insurance Code.

II. FUND REQUIREMENT:

Title 18 Del. C., Section 1721, contains the following fiduciary fund requirements for residents and non-residents.

(a) Residents:

Section 1721(b) - Every applicant for a certificate of authority as a broker, agent or limited representative requesting authority for lines of casualty, fire, surety or marine and transportation shall meet the prerequisites described in Section 1720 of this title and, in addition thereto, shall establish and maintain in a commercial bank in the state one or more trust accounts holding his personal, firm or corporate funds, and shall forthwith deposit and retain therein all premiums and return premiums received by him, pending due transmittal of such premiums or return premiums to the appropriate insurance company or insured; provided, however, he may deposit and commingle in the same such trust account all premiums and return premiums received by him, if the persons to whom such funds are owed and the amount owed to each are reasonably distinguishable from accounts and records maintained by the applicant. The Commissioner may control the procedures for maintaining such trust accounts by regulation.

(b) Non-Residents:

Section 1721(c) - Every applicant for a nonresident certificate of authority shall meet the requirements of subsection (a) of this section, except that the trust account may be established and maintained in a commercial bank in the state where the applicant resides.

III. EXAMINATION OF THE REQUIREMENTS:

A review of the code provisions as cited above makes it clear:

(a) That all general lines agents and/or brokers must establish and maintain the fiduciary or trust account.

(b) That funds deposited in this fiduciary account (commonly called premium accounts) are the funds of others and may not be used by the agent or broker for any other purpose including the payment of license and/or appointment fees.

(c) The mingling of premiums due the various insurers represented is permitted providing the agent/broker maintains accurate records. However, such premiums may not be mingled with the general business funds of the agent or broker. Earned commissions may be withdrawn from the Fiduciary Account at any time.

(d) That nonresidents applying for a license in Delaware must maintain a fiduciary, or trust account, as a condition of being issued a non-resident agent's or non-resident broker's license and that an existing Premium account in the applicant's state of residence meets the requirements for a Delaware Fiduciary Account provided such Premium account is not commingled with the Agent's General Business Account.

IV. EXCEPTIONS:

(a) Agents and/or brokers who are applying for life or life and health insurance are exempt from this requirement.

(b) Agents and/or brokers who, in the conduct of their insurance retain no funds (e.g., client delivers payment directly to the insurer) may attach a notarized certificate to the application for license or to annual application for continuation of license (broker) as follows:

Date: _____

I, _____ certify that I do not retain the funds of others in the conduct of my insurance business and hereby request an exemption of my insurance from the requirement of establishing a fiduciary account as required by 18 Del. C., Section 1721(b) or (c).

Applicant Signature

Notary Seal

V. PENALTIES:

(a) Failure to maintain the required fiduciary account shall result in the imposition of regulatory sanctions under the applicable provisions of the Insurance Code.

(b) Use of the designated fiduciary fund for purposes other than those authorized will result in action by this Department under 18 Del. C., Section 1732 and/or Section 1733, including fines, suspension and revocation of license.