

# Title 31

## MARYLAND INSURANCE ADMINISTRATION

### Subtitle 03 INSURANCE PRODUCERS AND OTHER INSURANCE PROFESSIONALS

#### Chapter 03 Fiduciary Responsibility of Insurance Producers: Premium Accounts Commingling of Funds

Authority: Insurance Article, §§2-109 and 10-126, Annotated Code of Maryland

##### **.01 Definitions**

*A. In this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

*(1) "Carrier" means a person that is:*

- (a) an insurer that holds a certificate of authority in the State and provides insurance in the State;*
- (b) a health maintenance organization that is licensed to operate in the State;*
- (c) a nonprofit health service plan that is licensed to operate in the State; or*
- (d) any other person or organization that provides insurance or health benefit plans subject to State insurance regulation.*

*(2) "Operating account" means an account owned by an insurance producer containing monies that are utilized primarily for the day to day operation of the insurance producer's business.*

*(3) "Personal account" means an account owned by an individual who is an insurance producer containing monies that are utilized primarily for the individual's personal expenses.*

*(4) "Premium" has the meaning stated in in §1-101 of the Insurance Article, Annotated Code of Maryland.*

*(5) "Premium account" means an account in a bank or banks authorized to do business in this State or subject to jurisdiction of this State containing premium monies or voluntary deposits, from which withdrawals may not be made except as specified in COMAR 31.03.03.02C.*

*(6) "Prompt remittance" means remittance of premium monies to carriers or insureds not later than the close of the fifth business day following receipt of the funds. The term "business day" does not include Saturdays, Sundays, or legal holidays.*

*(7) "Voluntary deposit" means a deposit into a premium account in excess of aggregate net premiums, return premiums and deposits received but not remitted, made for the purpose of maintaining a minimum balance, to guarantee the adequacy of the account, or to pay premium due but uncollected.*

##### **[.01] .02 General Requirements.**

*A. Premium Account.*

*(1) An insurance producer that does not make prompt remittance of a carrier or insured's premium shall maintain such premium in a premium account.*

*(2) Except as described in COMAR 31.03.02B, an insurance producer shall hold each insurer's premium in a singular premium account, separate from any other operating, personal, or premium accounts.*

*B. Commingling of Premium.*

*(1) Title insurance producers may not commingle trust money as defined in the Insurance Article, §10-121(a), Annotated Code of Maryland.*

*(2) An insurance producer acting as such in this State may:*

- (a) Make voluntary deposits into the insurance producer's premium account.*
- (b) Comingle a single carrier's premium with the premium of one or more other carriers into a single premium account, provided the insurance producer shall first obtain the express, written consent of the carrier.*

*(3) An insurance producer acting as such in this State may not commingle premium with the insurance producer's operating account or personal account.*

[A. Every insurance producer acting as such in this State who does not have the express written consent of the insurance producer's principals to mingle premium monies with the insurance producer's personal funds shall hold the premium monies separate from other funds in accordance with this regulation.

B. Insurance producers who do not make prompt remittance to principals and assureds of the funds shall deposit them in one or more appropriately identified accounts in a bank or banks authorized to do business in this State or subject to jurisdiction of this State, from which withdrawals may not be made except as hereinafter specified (any such account is hereinafter referred to as a "premium account").

C. An insurance producer who makes remittances to principals or assureds of the funds not later than the close of the fifth business day following receipt of the funds shall be deemed to have made prompt remittance and need not maintain a premium account for the funds. The term "business day" does not include Saturdays, Sundays, or legal holidays.

D. Deposits in a premium account in excess of aggregate net premiums, return premiums, and deposits received but not remitted may be made to maintain a minimum balance, to guarantee the adequacy of the account, or to pay premiums due but uncollected (any such deposit is hereinafter referred to as "a voluntary deposit").

E.] C. Withdrawals.

(1) Withdrawals from a premium account may not be made other than for the following purposes:

- (a) Payment of premiums to [principals] *carriers*.
- (b) Transfer to an operating account of bank interest, if the [principals have] *carrier has* consented to it in writing.
- (c) Transfer to an operating account of commissions either actual or average. If average commissions are used, the insurance producer shall maintain on file in the insurance producer's office at all times a letter from each [principal] *carrier* stating the percentage of the average commission.
- (d) (text unchanged)
- (e) Payment of return deposits to [assureds] *insureds*.
- (f) Payment of return premiums to [assureds] *insureds* in the ordinary course of business when a written agreement with the [principal] *carrier* authorizing this practice exists.

(2) [However, a] A withdrawal may not be made if the balance remaining in the premium account thereafter is less than aggregate net premiums, return premiums, and deposits received but not remitted.

F. (text unchanged)

**[.02] .03 Account Current System.**

In the case of an insurance producer operating under an account current system, maintenance at all times in one or more premium accounts of at least the net balance of premiums as determined by either actual or average commissions, return premiums, and deposits received but not remitted, shall be construed as compliance with this chapter, provided that the funds so held for each [principal] *carrier* are readily ascertainable from the insurance producer's records.

**[.03] .04 Substantial Interest.**

In those instances when the officers, directors, or principal management of [an insurer] *a carrier* have a substantial interest in either the conduct or operation of the agency or brokerage business, or when the officers, directors, or principal management of an agency or brokerage business have a substantial interest in the conduct or operation of the [insurer] *carrier*, a consent letter to the agency or brokerage business, by the [insurer] *carrier*, may not be permitted, and separate accounts shall be maintained.

**[.04] .05 Form of Letter of Consent.**

A. The letter of consent from [principals] *the carrier to an insurance [producers] producer* authorizing the commingling of funds shall be on the stationery of the [principal] *carrier* and shall contain the following minimum language:

"Consent is hereby given to commingle funds in your hands which are payable to us with other monies which you own or hold, in accordance with the provisions of COMAR 31.03.03 [of the Maryland Insurance Administration. If the funds are deposited in an appropriate interest bearing account, you are authorized to withdraw the interest for your own use]. As part of this consent, however, we shall require that all funds payable to us, will at all times be ascertainable from an examination of your books and records. The consent herein given shall remain in effect until cancelled by us upon not less than 30 days' written notice."

B. *The letter of consent shall be signed by an officer of the carrier.*