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IDAPA 18
TITLE 01
CHAPTER 10

18.01.10 - PRODUCERS HANDLING OF FIDUCIARY FUNDS

000. LEGAL AUTHORITY.
This rule is promulgated pursuant to authority granted by Sections 41-211 and 41-1024, Idaho Code. (4-11-06)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 18.01.10, "Producers Handling of Fiduciary Funds." (4-11-06)

02. Scope. This rule will affect "Producers," as defined in Section 41-1003, Idaho Code, who handle funds held in a fiduciary capacity. (4-11-06)

002. WRITTEN INTERPRETATIONS.
There are no written interpretations for these rules. (4-11-06)

003. ADMINISTRATIVE APPEALS.
All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General - General Provisions." (4-11-06)

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules. (4-11-06)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (4-11-06)

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (4-11-06)

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (4-11-06)

006. PUBLIC RECORDS ACT COMPLIANCE.
Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho. (4-11-06)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Fiduciary Fund Account. A financial account established to hold fiduciary funds as provided in Section 016. (4-11-06)

02. Fiduciary Funds. All premiums, return premiums, premium taxes and fees received by a producer. Fiduciary funds shall include: (4-11-06)

a. All funds paid to a producer for selling, soliciting or negotiating policies of insurance except for those earned fees recognized by statute as earned by the producer upon receipt which are payable to the producer and not the insurance company, pursuant to Section 41-1030, Idaho Code. (4-11-06)

b. All funds received by a producer from or on behalf of a client or premium finance company that are

to be paid to an insurance company, its agents, or to the producer's employer. (4-11-06)

c. All funds provided to a producer by an insurance company or its agents that are to be paid to a policyholder or claimant pursuant to a contract of insurance. (4-11-06)

d. All checks or other negotiable instruments collected by the producer that are made payable to the insurer. (4-11-06)

03. Premium. The consideration for insurance by whatever name called, and as more fully defined by Section 41-1803, Idaho Code. (4-11-06)

04. Producer. A person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. (4-11-06)

05. Receive. To collect or otherwise take actual or constructive possession of fiduciary funds. Receiving, includes but is not limited to, taking possession of money, checks, or other negotiable instruments. If fiduciary funds are in the form of a credit or offset on an account or other liability for the benefit of the consumer, without the producer actually taking possession of the funds, then constructive receipt shall be deemed to have occurred on the due date to the insurer. (4-11-06)

011. -- 013. (RESERVED)

014. FIDUCIARY FUND ACCOUNT.

01. Payable to an Insurer. Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to an insurer as described in Subsection 010.02.d. shall be remitted to the insurer within the time period as set forth in the terms and conditions as required by the insurer, or if not specified, then within twenty one (21) days of receipt. (4-11-06)

02. Payable to a Policyholder. Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to a policyholder or claimant as described in Subsection 010.02.c. shall be remitted to the policyholder or claimant within fourteen (14) days of receipt or as required by the terms of the policy of insurance, the insurer, or applicable law. (4-11-06)

03. All Other Fiduciary Funds. All other fiduciary funds received by the producer, except as described under Subsections 014.01 and 014.02 must be deposited into a fiduciary fund account according to the following schedule: (4-11-06)

a. If in the form of cash, within seven (7) days of receipt, except that, when a producer holds fiduciary funds in the form of cash that exceed two thousand dollars ($2,000), such funds must be deposited within three (3) business days. (4-11-06)

b. If in the form of checks, money orders or other negotiable instruments received or collected by the producer, within seven (7) days of receipt, except that the producer may remit such funds to the following: (4-11-06)

i. Another licensed producer or licensed business entity, subject to the time frames of Subsection 014.03.b.; or (4-11-06)

ii. A person designated by the insurer who has the obligation to remit the fiduciary funds to the insurer subject to the time frames of Subsection 014.03.b. (4-11-06)

04. Document the Receipt of Fiduciary Funds. A producer who receives fiduciary funds shall document the receipt of those funds in sufficient detail to determine, at a minimum, the date received, the name of the payee, and the amount received. If the producer receives cash, the producer shall give the payer a detailed receipt at the time of payment. The receipt shall include an indication that cash was received, the date received, the amount received, the payer's name, the payee's name, the purpose of payment, and any other information important to the transaction. The producer shall maintain the receipt records as records of a transaction, and keep those records for a

period of at least five (5) years. (4-11-06)

015. DEPOSIT OF OTHER FUNDS IN ACCOUNT.
A producer may deposit other additional funds for the sole purpose of: (4-11-06)

01. Establishing Reserves for Payment of Return Premiums. (4-11-06)

02. Advancing Funds Sufficient to Pay Bank Charges. (4-11-06)

03. Contingencies. For any contingencies that may arise in the business of receiving and transmitting premium or return premium funds (any such deposit is hereinafter referred to as "voluntary deposit"). (4-11-06)

016. TYPES OF ACCOUNTS PERMITTED.
A producer shall maintain the fiduciary funds only in: (4-11-06)

01. Accounts in Federally Insured Financial Institutions. Checking accounts, demand accounts, savings accounts or other accounts in a federally insured financial institution; or (4-11-06)

02. Exceed the Federally Insured Limits. If such funds held exceed the federally insured limits, then in addition to Subsection 016.01, those funds that exceed the federally insured limits may be deposited into the following: (4-11-06)

a. An investment account that invests monies in United States government bonds, United States Treasury certificates or in federally guaranteed obligations; (4-11-06)

b. Money market mutual funds registered with the SEC which are rated AAA by Moody's or AAA by S&P. (4-11-06)

03. Separate Fiduciary Funds Account. Nothing in this rule requires a producer to maintain and hold fiduciary funds in his, her, or its, own separate fiduciary funds account. Nevertheless, each producer is responsible for compliance with the provisions of this rule even if fiduciary funds are maintained in a fiduciary funds account established by another affiliated producer. (4-11-06)

017. ACCOUNT DESIGNATION.

01. Designation of a Fiduciary Fund. A fiduciary fund account shall be so designated on the records of the financial institution. The account shall have a separate account number, a separate check register and its own checks. (4-11-06)

02. Trust Fund Account. The phrase, "Trust Fund Account" shall be displayed on the face of each check drawn on a fiduciary fund account or other similar designation as permitted by the financial institution to identify the checks as being from a fiduciary fund account. (4-11-06)

018. INTEREST EARNINGS.
A fiduciary fund account may be interest-bearing or an investment account in accordance with Section 016. The producer shall maintain records establishing the existence and amount of interest accrued and shall make such records available for examination by the director. (4-11-06)

019. PERMISSIBLE DISTRIBUTION OF FIDUCIARY FUNDS.
Distributions from a fiduciary fund account shall only be made for the following purposes, and in the manner stated: (4-11-06)

01. Remit Premiums. To remit premiums to an insurer or an insurer's designee pursuant to a contract of insurance; (4-11-06)

02. Return Premiums. To return premiums to an insured or other person or entity entitled to the premiums; (4-11-06)

03. Remit Surplus Lines Taxes and Stamping Fees. To remit surplus lines taxes and stamping fees collected to the appropriate state; (4-11-06)

04. Reimburse Voluntary Deposits. To reimburse voluntary deposits made by the producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous voluntary deposit. (4-11-06)

05. Transfer or Withdraw Accrued Interest. To transfer or withdraw accrued interest to the extent that fiduciary fund account funds exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous interest deposit by the financial institution. (4-11-06)

06. Transfer or Withdraw Actual Commissions. To transfer or withdraw actual commissions and those earned fees recognized as earned by the producer, upon receipt, which are payable to the producer, only if the commissions and fees can be matched and identified with funds previously deposited in the fiduciary account. (4-11-06)

07. Pay Charges Imposed. To pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary funds account to the extent that fiduciary account funds exceed fiduciary obligations; and (4-11-06)

08. Transfer Funds. To transfer funds from one (1) fiduciary fund account to another fiduciary fund account. (4-11-06)

020. AUDIT OF FIDUCIARY FUNDS.
A producer shall make all records of collections for, deposits to and disbursements from each fiduciary fund account, as well as any related records accessible to the director for purposes of examination and audit or other general inquiry. (4-11-06)

021. PROHIBITED PRACTICES.
A producer shall not use fiduciary funds for personal use, including but not limited to: (4-11-06)

01. Use Fiduciary Funds as a Personal Asset. Using or allowing other persons to use fiduciary funds as a personal asset, or as collateral for a personal or business loan; (4-11-06)

02. Misreporting Fiduciary Funds. Reporting fiduciary funds on a financial statement without recording an equivalent liability and disclosing through a footnote that the fiduciary funds are not available for use by the reporting entity; (4-11-06)

03. Withhold Issue of Money From a Fiduciary Fund Account. Authorizing a financial institution to withhold issue of money from a fiduciary fund account unless required by a court order; or (4-11-06)

04. Seize Money from a Fiduciary Fund. Authorizing a financial institution to seize money from a fiduciary fund account unless required by a court order. (4-11-06)

022. TIMELY DISBURSEMENT OF FIDUCIARY FUNDS.
In addition to the requirements of Section 014, after receiving fiduciary funds, a producer shall: (4-11-06)

01. Remit Premiums. Remit premiums directly to an insurer or an insurer's designee within the time period as set forth in the terms and conditions as required by the insurer, or if not specified, within fourteen (14) days of receipt; (4-11-06)

02. Return Money Received. Return to the payer the money received as a premium deposit which is retained by the producer or returned to the producer by the insurer to the payer by the earlier of: (4-11-06)

a. Fourteen (14) days from the date the premium is received by the producer from the insurer, or (4-11-06)

b. Fourteen (14) days from the date the insurer notifies the insurance applicant that coverage has been denied if the producer retained the premium deposit. (4-11-06)

03. Refund Received from the Insurer. Issue a refund received from the insurer within fourteen (14) days by disbursing money to the insured or other party entitled thereto by notifying the insured that the refund is being applied to an outstanding amount owed or to be owed by the insured. If the producer is applying the refund to an outstanding amount owed by the insured, the producer shall obtain the insured's permission and provide the insured a detailed description of the amount owed to which the refund is being applied. (4-11-06)

04. Dispute of Entitlement of Funds. If there is a dispute as to entitlement of funds under Subsections 022.01 or 022.03, notify the parties of the dispute and seek to resolve the dispute and document the steps taken to resolve the dispute. (4-11-06)

05. Funds Held for More Than Ninety Days. If fiduciary funds within the scope of Subsections 022.01 or 022.03 are held for more than ninety (90) days, investigate to determine the entitlement to fiduciary funds and pay those fiduciary funds when due to the appropriate person in accordance with this section. (4-11-06)

023. VIOLATIONS.
Any violation of this rule may subject a producer to any sanction authorized pursuant to Section 41-1016(1), Idaho Code. (4-11-06)

024. - 999. (RESERVED)

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