

State of Idaho
DEPARTMENT OF INSURANCE

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TO: Insurance Producers Doing Business in the State of Idaho

FROM: William W. Deal, Director

SUBJECT: Money Handling and Fiduciary Funds

In recent months, the Department has identified situations where producers doing business in Idaho are mishandling funds received or collected in a fiduciary capacity. In some cases, producer mishandling of premium has left insureds without coverage at a time of loss. The purpose of this bulletin is to remind producers of your fiduciary responsibilities as mandated by Idaho Insurance Code § 41-1024 *Reporting and accounting for premiums* and Idaho Administrative Rule (IDAPA) 18.01.10 *Producers Handling of Fiduciary Funds*.

Idaho Insurance Code § 41-1024(2) provides that "fiduciary funds shall include all funds collected by an insurance producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or the producer's employer, and all funds collected by an insurance producer from an insurance company or its agents that are to be paid to a policyholder or claimant under any contract of insurance."

The Department urges producers to thoroughly review Idaho Code § 41-1024 and IDAPA 18.01.10 to assure you are in compliance with Idaho law. Common examples of mishandling of fiduciary funds include:

- Not maintaining proper receipts of fiduciary funds.
- Not having a separate "trust fund account" set up for depositing and distributing fiduciary funds.
- Not meeting required timelines for depositing and distributing fiduciary funds.
- Not maintaining proper records of collections, deposits, and disbursements from fiduciary fund accounts.
- Not following permissible fiduciary fund distribution guidelines.
- Not properly distributing fiduciary funds held for more than 90 days.
- Commingling fiduciary funds with other funds.
- Diverting or misappropriating fiduciary funds for personal use.

There are other common misinterpretations of fiduciary requirements. By way of clarification:

- Idaho Insurance Code does allow multiple producers to maintain and hold fiduciary funds in a single trust fund account or for producers to collect and deposit funds into a sweep account maintained by or for an applicable insurer. However, each producer is still responsible for compliance with Idaho Code § 41-1024 and IDAPA 18.01.10 even if funds are maintained in a fiduciary fund account established by another affiliated producer or in a sweep account.
- IDAPA 18.01.10.016 provides guidelines for the types of accounts permissible for maintaining fiduciary funds. The Rule also provides alternatives to bank accounts if the amount of fiduciary funds held exceeds federally insured limits. If funds are less than the federally insured amount, they should be maintained in a federally insured financial institution per IDAPA 18.01.10.016.01. Also, the purpose of this section is to assure fiduciary funds are kept in a financially secure account. The intent is not to imply that producers can use fiduciary funds for investment purposes.

The intent of Idaho Code § 41-1024 is to assure producers can account for all fiduciary funds and to assure fiduciary funds are paid to the person entitled to the funds. Idaho Code does not allow for even temporary, short term use of fiduciary funds for any other purpose. Examples of unacceptable use of fiduciary include using cash received as premium for personal use and replacing it with personal checks or using funds received as premium for operating expenses.

The Department will pursue violations, as appropriate, against any producer who has violated fiduciary fund requirements.

Also, keep in mind that per Idaho Code § 41-1024(3), “any producer who, not being lawfully entitled thereto, diverts or appropriates to his own use such trust or fiduciary funds or any portion thereof, whether or not such funds have been separately deposited, shall upon conviction be guilty of a felony.”

The Idaho Insurance Code and Rules can be accessed through the Department’s website at: www.doi.idaho.gov under Laws/Rules/ Bulletins. If you have any questions regarding the handling of fiduciary funds, please contact the Department’s Consumer Affairs section at (208) 334-4250, or toll free within Idaho at (800) 721-3272.