

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Insurance Producer Standards of Conduct

Readoptions with Amendments: N.J.A.C. 11:17A, 11:17B and 11:17D

Readoption: N.J.A.C. 11:17C

Proposed: July 19, 2010 at 42 N.J.R. 1470(a).

Adopted: December 16, 2010 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: December 17, 2010 as R. 2011 d. 027, **with substantive and technical changes** not requiring additional public notice or opportunity to comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-26 et seq.

Effective Date: December 17, 2010, Readoptions;
January 18, 2011, Amendments.

Expiration Date: December 17, 2015

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received written comments from the New Jersey Land Title Association; The Independent Insurance Agents and Brokers of New Jersey; the Surplus Lines Association of New Jersey; and the Professional Insurance Agents of New Jersey, Inc.

COMMENT: One commenter supported the readoption of the rules and the proposed amendments.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter noted the proposed change to N.J.A.C. 11:17B-1.3, which revised the definition of “insurance agent” to delete the phrase “and who may be authorized to countersign insurance policies on its behalf.” The commenter noted that while there are no longer any countersignature requirements in other lines of insurance, it is not uncommon that title insurance jackets, schedules and endorsements are physically countersigned. The commenter suggested that, rather than completely eliminate the phrase in question, the Department change the “and” to an “or” in that phrase. The commenter believed that this would serve the purpose of eliminating countersigning policies as a necessary part of being an “insurance agent” but preserves that function within the role of an “insurance agent” where countersignatures are still utilized.

RESPONSE: Upon review, the Department has determined to not adopt the proposed deletion, that is, to retain the current language. The purpose of the deletion was to delete language that was believed no longer to have any effect. Based on the comment, it appears that some lines continue to have countersignatures. The Department does not believe that changing the word “and” to “or” has any substantive effect. Similarly, retaining the language has no substantive effect other than to continue to recognize that insurance agents may, with the authorization of the insurer, countersign policies on behalf of an insurer.

COMMENT: One commenter stated that the phrase “financial institution” is used in two different sections of the rules with two different meanings. In N.J.A.C. 11:17A, it is given a broad definition so that the disclosure requirements are widely applicable. In N.J.A.C. 11:17C, it is given a narrower definition so that the places in which a producer trust account are permitted can come under the Department’s jurisdiction. The commenter suggested that, given the disparate meaning of the two sections, to eliminate confusion the phrase “financial institution” in N.J.A.C. 11:17C be changed to “depository institution” without altering the definition itself.

RESPONSE: Upon review, the Department has determined not to change this provision. The definitions are contained in different chapters, which have different applicability. Therefore, the two different meanings in two distinct chapters for the same term are not inconsistent. Moreover, the definitions have been utilized for several years with no problems or confusion. The Department will monitor this issue and will propose amendments if it determines such changes are necessary.

COMMENT: One commenter stated that there appears to be an ambiguity regarding whether a trust account required to be maintained pursuant to N.J.A.C. 11:17C-2.3 may be used as the “separate trust or escrow account” required under the so-called “Good Funds” Act, N.J.S.A. 17:46B-10.1. The commenter suggested that N.J.A.C. 11:17C-2.3(a) be revised upon adoption to add a new paragraph three to read as follows: “For title insurance only, when a trust account or escrow account is required pursuant to N.J.S.A. 17:46B-10.1a.”

RESPONSE: Upon review, the Department has determined not to change this provision. N.J.S.A. 17:46B-10.1 requires title producers and title insurers to deposit the proceeds of a real estate transaction in a separate trust or escrow account, “which shall not be comingled with ... funds held by the producer or company in any other capacity” (emphasis supplied). Accordingly, use of the trust accounts established pursuant to N.J.A.C. 11:17C-2.3(a) for the maintenance of such “Good Funds” would not comply with the requirements of N.J.S.A. 17:46B-10.1.

COMMENT: One commenter suggested that the reference to a five percent interest of an owner in N.J.A.C. 11:17D-2.4(a)5 should be changed to 10 percent to conform with the proposed change in N.J.A.C. 11:17A-1.6(c).

RESPONSE: The Department agrees. The suggested change has been made upon adoption for the reasons expressed by the commenter and to ensure consistency with N.J.A.C. 11:17-2.11(c), which also references “10 percent.”

COMMENT: One commenter stated that, while it supported the increase in the amount of the trigger for an “inducement” under N.J.A.C. 11:17A-1.2, it encouraged the Department to stay vigilant regarding any abuses or market misconduct that could flow from this measure.

Another commenter expressed concern with the change to the definition of “inducement” in N.J.A.C. 11:17A-1.2, with the amount being changed from \$25.00 to \$100.00. While the commenter understood that the cost of a small inducement, such as a meal or sporting event, has increased in recent years, the commenter expressed concern that such a large inducement

normally exceeds what it believed is a reasonable amount for a personal lines policy. The commenter also stated that for a commercial policy, the amount proposed to be permitted as an inducement potentially could influence a decision maker who works for the business policyholder. The commenter believed that the Department should consider postponing this change until reviewing the potential negative impact with the producer trade associations. In the alternative, the commenter suggested retaining the personal lines maximum inducement amount at \$25.00 and raising the commercial lines maximum to \$50.00.

RESPONSE: Upon review of the commenter's concern, the Department has determined not to adopt the proposed amendment and to retain the existing definition of "inducement." The Department will consider amending this rule in the future to provide for different "caps" for personal and commercial lines.

COMMENT: One commenter expressed concern with the proposed amendment to N.J.A.C. 11:17A-1.6 to delete the requirement that a separate producer be assigned to each branch office. While the commenter understood that in some cases the assigned producer may change from office to office and from time to time, it is concerned that one licensed producer could open up several offices. The commenter believed that the producer would then be "temporarily" away from most offices at most times and thus there would not be direct supervision of clerical employees by a licensed producer. The commenter suggested that the rule be clarified to make clear that there must be at least as many licensed producers in the agency as there are branch offices. The commenter also believed that "temporarily away from the branch office location"

should be better defined to establish what would be acceptable, that is, for a few hours, one day, several days, several weeks, etc.

RESPONSE: Upon review, the Department has determined that no change is required. As noted in the proposal Summary, this change ensures consistency with N.J.A.C. 11:17-2.8(e), which provides that a producer must be present any time a branch office is engaged in insurance-related conduct, but that the branch office may remain open to service accounts and engage in non-insurance-related conduct (that is, conduct which does not require that the individual or entity be licensed as an insurance producer pursuant to N.J.S.A. 17:22A-26 et seq.) while the assigned producer is temporarily absent. This addresses the commenter's concerns that insurance-related conduct could be undertaken with no licensed producer present. As was also noted in the Summary, the change reflects the Department's intent that while a producer must be assigned to a branch office, this does not mean that a separate and distinct producer must be assigned to each branch office. Without this clarification, if a producer were ill (for example with the flu), to remain in technical compliance with the rule the office would have to close down completely and would not be able to service existing accounts.

Finally, with respect to the comment that "temporarily away from the branch office location" should be better defined, the Department notes that the rule has been utilized for several years with no problems or confusion. In addition, any such changes could not be made upon adoption as it would require public notice and opportunity to comment. The Department will monitor this issue and will propose amendments if it determines such changes are necessary.

COMMENT: One commenter noted that there is no change proposed to be made to N.J.A.C. 11:17C for reoption. The commenter expressed the desire to further discuss potential changes with the Department for future proposals, especially in the area of how fees may be charged.

RESPONSE: The Department welcomes input from interested parties in the development of its rules.

COMMENT: One commenter, while supporting the proposal overall, requested that the rules be clarified with respect to fees that a producer may charge for services rendered in the sale of personal lines surplus lines insurance pursuant to N.J.A.C. 11:17B-3.2, and the fees that a surplus lines producer may charge to an originating (that is, retail) producer pursuant to statute, N.J.S.A. 17:22A-38. The commenter noted that N.J.A.C. 11:17B-3.2 currently provides that no service fee for any one policy for personal lines surplus lines insurance or personal lines property/casualty insurance shall exceed \$20.00. The commenter noted that N.J.S.A. 17:22A-38 authorizes a surplus lines producer to charge a fee to an originating broker for placing a particular policy. Recent changes to that statute effective October 1, 2010 remove the previous \$50.00 cap on the amount of that fee, and instead authorize the Commissioner of Banking and Insurance (Commissioner) to establish the fee by regulation. The commenter requested that the Department revise the rule to clarify that the limitation in N.J.A.C. 11:17B-3.2 on service fees for any one personal lines surplus lines insurance policy, that is, the \$20.00 cap, is not affected by the statutory authority of a surplus lines producer to charge a separate fee to an originating broker in accordance with N.J.S.A. 17:22A-38 (including any rules implementing that statute). The commenter suggested that a new subsection (d) be added to N.J.A.C. 11:17B-3.2 to read as

follows: “Nothing in this section shall preclude a surplus lines producer from charging a separate fee for the placement of a surplus lines policy pursuant to N.J.S.A. 17:22A-38.”

RESPONSE: Upon review, the Department has determined that no change is required. The Department recognizes that N.J.S.A. 17:22A-38 was recently amended to eliminate the statutory cap of \$50.00 and to authorize the Commissioner to establish the maximum fees that a surplus lines producer may charge an originating broker by rule. The issues raised by the commenter will be addressed in the rules that establish the fees under N.J.S.A. 17:22A-38. The Department is in the process of developing rules for proposal. In the interim, producers should continue to adhere to the \$50.00 fee limitation previously referenced in N.J.S.A. 17:22A-38b pursuant to the guidance issued in Bulletin No. 10-27.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments are not subject to any Federal requirements or standards.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:17A-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Inducement” means money or any favor, advantage, object, valuable consideration or anything other than money which has a cost of or redeemable value greater than *[\$100.00]* ***\$25.00***.

...

11:17B-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Insurance agent” means an insurance producer acting as an insurance agent authorized, in writing, by any insurance company to act as its agent to solicit, negotiate or sell insurance contracts on its behalf or to collect insurance premiums ***and who may be authorized to countersign insurance policies on its behalf***.

11:17D-2.4 Schedules of fines for certain insurance producer licensing violations

(a) The Department shall impose fines for certain insurance producer violations in accordance with the following schedule:

1. – 4. (No change.)

5. Failure to notify the Department within 30 days of the addition or deletion of owners of more than *[five]* ***10*** percent or officers, directors or partners as required by N.J.A.C. 11:17-2.11(c): \$250.00;

6. – 7. (No change.)

(b) (No change.)