MAINE BUREAU OF INSURANCE
CHAPTER 540
PREMIUM TRUST ACCOUNT FIDUCIARY DUTIES
SUMMARY OF COMMENTS AND STATEMENT OF BASIS OF PROPOSED RULE

Introduction

Pursuant to an October 5, 2015 Notice of Rulemaking, the Superintendent of Insurance proposed the adoption of new Bureau of Insurance Rule 540, Premium Trust Account Fiduciary Duties. Statutory authority for the rule is provided pursuant to 24-A M.R.S. §§ 212 and 1449.

A public hearing took place on November 3, 2015. Daniel Bernier spoke on behalf of the Maine Insurance Agents Association (MIAA) and the Maine Chapter of the National Association of Insurance and Financial Advisors (NAIFA). Charles Soltan spoke on behalf of the Maine Association of Insurance Companies (MAIC).

A public comment period remained open until 4:30 p.m. November 16, 2015. On November 16th, the Bureau received comments from Katherine Sieck, Senior Vice President for Public Affairs, on behalf of AAA Northern New England Insurance and the Interinsurance Exchange of the Automobile Club (together, AAA).

Outline of Rule with Summary of Comments

The purpose of the rule is to set forth specific minimum standards and requirements regarding the fiduciary obligations of insurance producers. Current State statute requires insurance producers to handle insurance premiums in a fiduciary manner but provides no specific guidance as to what this entails. The rule requires that funds be held in trust accounts in qualifying financial institutions, segregated from personal and business operating accounts of the producer. The rule limits access to these accounts and sets standards relating to trust account deposits and withdrawals. Last, the rule establishes recordkeeping requirements relating to premium trust funds held by producers.

MIAA and NAIFA. Mr. Bernier said that MIAA and NAIFA support the proposed rule. He expressed some concern with transitioning to the requirement that trust accounts include the phrase “premium trust account.” That is because a number of producers already have trust accounts but do not necessarily identify them as such on checks. He suggested that the Superintendent could resolve this concern by lengthening the time that producers have to comply with the rule from 45 to 90 days. See response to MAIC comment below. The Superintendent agrees that this change is appropriate. Mr. Bernier also said that, without proposing a change to the rule on this point, he thought producers should include their employer identification numbers on these accounts in order to clarify that interest earned on them belongs to the producers. This step makes sense, but the Superintendent agrees that the proposed rule need not address this issue.

MAIC. Mr. Soltan said that MAIC supports the proposed rule. He suggested that producers be allowed to use their existing stock of checks before having to buy ones that comply with the rule's "premium trust account" requirement. The Superintendent agrees with this suggestion and has revised the proposed rule accordingly.

AAA. Ms. Sieck made two substantive comments and one proofreading comment. Her first substantive comment was to add a new Section 3(E). This would allow producers who are affiliated with an insurer to maintain in a business operating or other account the premium and return premium held on the policies that insurer. AAA believes that the concerns with commingling producer funds and premium payments and with not timely forwarding payments to insurers are reduced when the parties are under common control. Common control might reduce these concerns. However, the Superintendent's principal concern is that producers' fiduciary funds be kept apart from operating and other accounts so that the Superintendent can have ready access to the records of those funds during an examination or investigation. The Superintendent therefore declines to make this change.

AAA's second substantive comment was to amend Section 4(B) to allow non-licensed employees of an affiliate of the producer to be a signatory on the producer's trust account. The rationale for this proposal is that the accounting staff of a parent or affiliate be able to provide common services to these entities. This proposal provokes the same concerns as AAA's first comment, and the Superintendent therefore declines to make this change.

Last, Ms. Sieck recommended revising Section 3(C) as follows: "Under no circumstances shall an insurance producer as defined herein ~~shall not~~ place fiduciary funds in a personal or business operating account." The Superintendent agrees that this change would make sense had the proposed rule contained this error. However, this change is not necessary because Section 3(C) as posted on the Bureau's web site reads as follows: "Under no circumstances shall an insurance producer place fiduciary funds in a personal or business operating account."