

[Department of Banking, Insurance, Securities & Health Care Administration]

Vermont Insurance Division

REGULATION 95-1 Trust Accounts (Anti-comingling)

Oct. 1, 1996

S 1

The purpose of this regulation is to ensure the sufficiency of funds held by third parties when the intended beneficiaries of the funds are insureds, insurance policy applicants or insurers.

S 2

This regulation is issued pursuant to the authority vested in the Commissioner of Banking, Insurance and Securities by 8 V.S.A. 75 and 4812.

S 3

This regulation applies to any third party which accepts receipt of funds intended to offset insurance policy obligations from any insured, insurance policy applicant or insurer.

S 4

For the purposes of this regulation, the following definitions apply:

A. Financial Account is an account held by a federally insured financial institution or a registered investment company that is short-term, highly liquid, and without risk to principal.

B. Third Party Recipient includes insurance agents, insurance brokers, independent adjusters, managing general agents, consultants or any other person or business entity that receives funds intended to offset insurance policy obligations of the remitter.

Third Party Recipient does not include a federally insured depository institution or its subsidiaries, affiliates or parent corporation, or a lender licensed under Chapter 73, 8 V.S.A., except in such instances as the federally insured depository institution, its subsidiaries, affiliates or parent corporation or licensed lender is engaged in a transaction for which it is required to be licensed under 8 V.S.A. Chapter 131.

C. Trust Account is a financial account established by a third party recipient which is separate and distinct from the operating and/or personal accounts of the third party recipient. A trust account is comprised of funds, remitted from insureds, policy

applicants or insurers to third party recipients, that are intended to offset insurance policy obligations of the remitter.

D. Voluntary Deposits are deposits made to trust accounts by third party recipients from sources other than funds remitted from insureds, policy applicants or insurers. Third party recipients may make voluntary deposits into a trust account in order to maintain a minimum balance, to guarantee the adequacy of the account, or to cover funds due but uncollected.

S 5

A. Every third party recipient which accepts funds intended to offset insurance policy obligations of the remitter is a fiduciary for those funds. Every third party recipient which does not immediately remit the funds to the insured or insurer for whom the funds are intended shall deposit the funds in a trust account.

Funds which are received from the remitter and which are, in turn, remitted to the insured or insurer within the course of the same business day, or no later than the end of the following business day, will be considered to have been immediately remitted. However, the third party remitter must show no intent to inappropriately use or commingle remitter's funds with the third party recipient's operating accounts, nor may the actions of the third party recipient have the effect of inappropriately using or commingling the remitter's funds.

B. No funds may be withdrawn or transferred from a trust account except as hereinafter specified:

- 1) Withdrawals from trust accounts shall be made to meet payment of premiums to insurers and payment of return premiums or other credits to insureds.
- 2) A third party recipient may transfer to its operating account or accounts: interest earned on trust accounts; commissions on insurance policies; or, monies paid into the account in the form of voluntary deposits so long as the balance remaining in the trust account is greater than or equal to the aggregate of all fiduciary funds received but not remitted.

S 6

Every third party recipient shall maintain a ledger or system showing all receipts and disbursements for each trust account established by the third party recipient. Entries into the ledger or system shall identify, at a minimum:

- 1) the source of all deposits,
- 2) the nature of all disbursements,

3) the date and amount of each transaction, and

4) the name of the insured, policy applicant, or insurer for whom the transaction was made.

S 7

Should a court hold any provision of this regulation invalid in any circumstances, the invalidity shall not affect any other provisions or circumstances.

S 8

This regulation shall become effective October 1, 1996.