

NEW YORK STATE
INSURANCE DEPARTMENT

THIRD AMENDMENT TO REGULATION NO. 29
(11 NYCRR 20)

Brokers And Agents – General

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1109, 2103, 2104, 2109, 2112, 2119, 2120 and 2121 of the Insurance Law, do hereby promulgate the following Third Amendment to Part 20 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 29) to take effect upon publication in the State Register.

(ALL MATTER NEW)

Section 20.4 is renumbered 20.5 and new Section 20.4 is added to read as follows:

§20.4 Fiduciary Responsibility of Insurance Agents and brokers; Minimum Recordkeeping Requirements.

(a) This section is issued for the purpose of interpreting, and facilitating compliance with, section 2120(a) and (c) of the Insurance Law.

(b)(1) Every licensee who is required to maintain a premium account shall maintain books, records and accounts in connection with their business to record:

- (i) all money received in trust for insurers or members of the public;
- (ii) all disbursements out of money held in trust;
- (iii) all other money received and disbursed in connection with the business; and

(2) At a minimum, to comply with subsection (1), every licensee who is required to maintain a premium account shall maintain:

(i) a book or other permanent account record, imprinted with the name and address of the licensee, showing all receipts and disbursement of money, distinguishing therein between:

(a) the receipt of money in trust for insurers and members of the public and disbursements out of money held in trust, and the record shall have the following minimum detail:

(1) For receipts:

- (i) Amount of money received
- (ii) Date received
- (iii) Name of insured
- (iv) Insurer's name and policy binder number, and
- (v) Description of the risk (*vehicle type, property description, liability exposure, etc.*)

(2) For disbursements:

- (i) Amount of money received
- (ii) Check number
- (iii) Name of insured
- (iv) Insurer's name and policy binder number, and
- (v) Description of the risk (*vehicle type, property description, liability exposure, etc.*)

(b) money received and money paid by the licensee for general operations, services, sales and other insurance;

(ii) records in such form to show all billings, correspondence or other transmittal related to premiums, return premiums, commissions and fees charged to members of the public;

(iii) bank statements or passbooks, cashed checks and detailed deposit slips for both trust and general accounts;

(3) Every licensee who is required to maintain a premium account shall maintain accounting records in a manner that clearly reflects the nature and purpose of the transaction and accurately and fairly states or measures or properly accounts for the money or valuable consideration exchanged in the transaction.

(4) Where this section requires a record to be kept by a licensee, it may be kept in bound or loose-leaf book, or by means of a mechanical, electronic or other device.

(5) The licensee shall:

(i) take adequate precautions, for safeguarding the records and for protection against the falsification of the information recorded; and

(ii) provide means for making the information available in an accurate and useable form for inspection and copying to any person lawfully entitled to examine the record.

(c)(1) The information which is made available under clause 20.4(b)(5)(ii) is admissible in evidence as *prima facie* proof of all facts stated therein.

(2) Where this section requires a record to be kept by a licensee, it shall be preserved for at least the three-year period preceding the most recent fiscal year-end of the licensee.

(3) The records described in subdivision (b) of this section shall be maintained in this state at the licensee's principal place of business or stored in such a manner as to allow reasonable accessibility and made available upon request by the Department; or if a non-resident licensee, shall be made available in this state within 10 days upon request.

(4) The records described in subdivision (b) of this section shall be in addition to any requirements already detailed in the Insurance Law and Regulations.

(5) The record described by 20.4(b)(2)(i)(a)(1), the receipt along with a copy of the application, shall be delivered to the insured at the time of its making.

(d) If any provision of this section or the application thereof to any person or circumstances is held unauthorized by law, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

A new Section 20.6 is added to read as follows:

§ 20.6 Fees; Insurance Law Section 2119.

Where a fee is permitted, no licensee shall stipulate, charge or accept any fee that is not fully disclosed or the basis for which is not fully disclosed prior to the service being rendered; by executing a signed memorandum by the client which contains the term of the agreement and the date and the amount of such fee. Such fees shall be segregated from trust funds and accounted for in a manner consistent with sections 20.3(b)(3) and (4) and 20.4(b).

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, do hereby certify that the forgoing is the Third Amendment to 11 NYCRR 20 (Regulation 29), promulgated by me on October , 2001, pursuant to the authority granted by Sections 201, 301, 1109, 2103, 2104, 2109, 2112, 2119, 2120 and 2121 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on November 8, 2000. No other publication or prior notice is required by statute.

Gregory V. Serio
Superintendent of Insurance

October , 2001