

**Statutory Chapters in New Mexico Statutes Annotated 1978 / CHAPTER 59A
INSURANCE CODE / ARTICLE 12 INSURANCE AGENTS, BROKERS AND
SOLICITORS / 59A-12-22. Fiduciary funds; agents, brokers, solicitors, surplus line
brokers, bail bondsmen, motor club agents and others. (2003)**

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A. All funds of others received by any person licensed or acting as an insurance agent, broker, solicitor, surplus line broker, bail bondsman or solicitor, motor club agent, or agent or solicitor for health care plan, prepaid dental plan, or in any similar capacity for which licensing of such person is required under the Insurance Code [59A-1-1 NMSA 1978], are received and held by such person in a fiduciary capacity. Any such person who diverts or appropriates such funds to his own use, or takes or secretes with intent to embezzle, all without consent of the person entitled to such funds, is guilty of larceny by embezzlement.

B. Subject to the terms of any agreement between such person or licensee and his principal or obligee, each such person who does not make immediate remittance of such funds to the insurer or other person entitled thereto, shall elect and follow as to funds received for account of a particular insurer or person either of the following methods:

(1) remit received premiums (less applicable commissions, if any) and return premiums to the insurer or other person entitled thereto within fifteen days after such receipt; or

(2) establish and maintain in a commercial bank or other established financial institution depositary one or more accounts, separate from accounts holding general personal, firm or corporate funds, and forthwith deposit and retain therein pending transmittal to the insurer or other person entitled thereto, all such premiums (net of applicable commissions, if any) and return premiums. Funds belonging to more than one principal may be as deposited and held in the same such account so long as the amount held for each such principal is readily ascertainable from the records of the depositor. The depositor may commingle with such fiduciary funds in a particular such account such additional funds as the licensee deems prudent for advancing premiums, reserves for payment of return commissions, or for other contingencies arising in the business of receiving and transmitting premiums or return premiums.

C. Such person may commingle with his own funds to an unlimited amount funds of a particular principal who has in writing in advance expressly waived the segregation requirements of Subsection B of this section.

D. Any commingling of funds with funds of any such person permitted under this section shall not alter the fiduciary capacity of such person as to funds of others.

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History: Laws 1984, ch. 127, § 223; 2003, ch. 202, § 7.

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The 2003 amendment, effective June 20, 2003, deleted "in this state" following "financial institution depository" in Paragraph B(2) and substituted "of this section" for "above" at the end of Subsection C.

Insurance Code. — See 59A-1-1 NMSA 1978 and notes thereto.

ANNOTATION

Applicability. — Under § 59A-30-14, this section is applicable to title insurance companies and title insurance agents. 1987 Op. Att'y Gen. No. 87-30.

Escrow accounts. — A title insurance company acting as escrow agent cannot retain for its own benefit interest paid by a financial institution on escrow accounts without express permission from the customer or a written contract allowing this payment of interest as compensation. 1987 Op. Att'y Gen. No. 87-30.

The acceptance of other in-kind services and consideration in lieu of interest on escrow accounts is in violation of the fiduciary duties of the title insurance company, agent, broker, or solicitor to the principal. 1987 Op. Att'y Gen. No. 87-30.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Computation of net "loss" for which fidelity insurer is liable, 5 A.L.R.5th 132.