

Illinois statute provides clear definitions as to broker's collection accounting, premium payments receipt and penalties associated with loss

The Illinois Legislature specifically chose the term "fiduciary capacity", not "trust", when drafting the statute.

Nowhere in the Illinois statute does the word, "trust" or "trust accounting" appear.

In section (b), the statute provides that **once a premium payment has been received by the broker from the insured, it is considered "paid"** to the carrier. No loss or risk of loss is allowed after a premium is paid.

District court ruled there was no loss.

Illinois Compiled Statutes 215 ILCS 5 Illinois Insurance Code. Section 500-115

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(215 ILCS 5/500-115)

(Section scheduled to be repealed on January 1, 2017)

Sec. 500-115. Financial responsibilities.

(a) Any money that an insurance producer, limited line producer, temporary insurance producer, business entity, or surplus line producer receives for soliciting, negotiating, effecting, procuring, renewing, continuing, or binding policies of insurance shall be held in a fiduciary capacity and shall not be misappropriated, converted, or improperly withheld. An insurance company that delivers to any insurance producer in this State a policy or contract for insurance pursuant to the application or request of an insurance producer, authorizes the producer to collect or receive on its behalf payment of any premium that is due on the policy or contract for insurance at the time of its issuance or delivery and any premium that becomes due on the policy or contract not more than 90 days thereafter.

(b) An insurer that issues a policy of insurance shall be deemed to have received payment of the premium if the insured paid any insurance producer requesting the coverage. The insurer shall be responsible to the insured for any return premium.

(c) In the case of open accounts receivable with the balance payable to an insurance producer within a specified period of 90 days or less, where the balance is not fully paid within that period, a late charge not exceeding 1.5% per month may be added by the insurance producer to the unpaid balance to induce payment of the premium.

(d) If an insurance producer or surplus line producer knowingly misappropriates or converts to his or her own use or illegally withholds fiduciary moneys in the amount of \$150 or less, he or she is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for subsequent conversions, misappropriations, and withholdings of that nature. If an insurance producer or surplus line producer knowingly misappropriates or converts to his or her own use or illegally withholds premiums in excess of \$150, he or she is guilty of a Class 3 felony.

(Source: P.A. 92-386, eff. 1-1-02.)

[Reference-Illinois Compiled Statute 215 ILCS sec 500-115]

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=021500050HArt%2E+XXXI&ActID=1249&ChapterID=22&SeqStart=128900000&SeqEnd=135500000>

The regulations covering PFTA deposits are covered in section 3113.40 (a)-(f).

a) All collected insurance premiums must be deposited into PFTA bank account.
There is no requirement to maintain a separate PFTA for each insurer.

c) Trial records show all NNIB receipts of collected premiums and other revenue are deposited in the PFTA (Ref: Tr. 651)

f) **Broker's other revenue funds are permitted to be deposited as non-premium receipts-commingled account. Permitted commingled account proves as a matter of law that PFTA is not a trust account.**

Section 3113.40 Premium Fund Trust Account

- a) All licensees required to maintain a PFTA, pursuant to subsection (c), shall establish and maintain a PFTA in a financial institution. All resident and quasi-resident licensees required to maintain a PFTA pursuant to this Section shall maintain such PFTA with one or more financial institutions located within the State of Illinois and subject to the jurisdiction of the Illinois courts. Licensees are not required to maintain a separate PFTA for each insurer unless required by an insurer(s).
- b) All licensees required to maintain a PFTA, pursuant to subsection (c), shall certify at each license renewal or reinstatement date that premiums are held in a PFTA. The account must be designated as a Premium Fund Trust Account on the bank records and those words shall be displayed on the face of the checks of that account.
- c) A PFTA must be established and maintained if a licensee:
 - 1) Holds any premiums for 15 days or more before remitting to an insurer or other licensee.
 - 2) Deposits any collected premiums into a financial institution account or other account or uses the premiums, even though the premiums are remitted within 15 days.
- d) The absence of a PFTA does not relieve the licensee of the obligation to hold the premiums in a fiduciary capacity, and the premiums shall not be used for purposes other than those authorized by this Part.
- e) All licensees who maintain or are required to maintain a PFTA must deposit all premiums received into the PFTA.
- f) Non-premium monies received by the licensee for soliciting, negotiating, effecting, procuring, renewing, continuing or binding policies of insurance may be deposited into the PFTA. Examples of non-premium monies are service fees, policy fees, late charges, inspection fees and surplus lines premium taxes.

[Reference-Illinois Compiled Statute 215 ILCS sec 500-115]

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=021500050HArt%2E+XXXI&ActID=1249&ChapterID=22&SeqStart=128900000&SeqEnd=135500000>

The regulations covering PFTA disbursements are covered in section 3113.40.

Specific categories of disbursements are allowed

Any disbursement from the PFTA to other than a carrier, a customer, or an insurance broker (including NNIB) would constitute a misappropriation of funds.

h.6) NNIB is the licensee, therefore it is entitled to received PFTA disbursements.

Any disbursement from the PFTA to other than a carrier, a customer, or an insurance broker (including NNIB) would constitute a misappropriation of funds. No evidence was presented that any inappropriate disbursements were made.

lawfully withdrawn.

h) The following disbursements may be lawfully withdrawn from the PFTA:

- 1) Net or gross premium remittances due other licensees or insurers. Claims payments or reinsurance premiums when offset at the direction of the insurer may be transferred to another account;
- 2) Return premiums due insureds;
- 3) Commissions due the licensee, net of any financial institution fees or service charges, or commissions due another licensee only when the commission withdrawal is matched and identified with premiums previously deposited into the PFTA;
- 4) Non-premium monies when matched and identified with prior non-premium PFTA deposits;
- 5) Interest or other revenue which the licensee is authorized to retain.
- 6) Withdrawals pursuant to subsections (h)(3), (4) and (5) must be made payable to the licensee or another licensee.

[Reference-Illinois Compiled Statute 3113.40]

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=021500050HArt%2E+XXI&ActID=1249&ChapterID=22&SeqStart=128900000&SeqEnd=135500000>

The regulations establishing the required balance in the PFTA at any particular time are covered in section 3113.40.

Reconciling the use of the PFTA is strictly a cash in-cash out accounting statutory methodology.

j) The PFTA balance in the financial institution shall at all times be the amount deposited less lawful withdrawals. If the balance in the financial institution is less than the amount deposited less lawful withdrawals, the licensee shall be deemed to have misappropriated fiduciary funds and to have acted in a financially irresponsible manner.

[Reference-Illinois Compiled Statute 3113.40]

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=021500050HArt%2E+XXXI&ActID=1249&ChapterID=22&SeqStart=128900000&SeqEnd=135500000>

- The balance in the PFTA must remain above the amount of premium payments actually received that have not yet been remitted to the carriers. Accounts receivable and accounts payable do not figure into the math.
- **This is the only lawful method prescribed by the Illinois legislature and the only method to be used in reconciling PFTA use.**
- **Noncompliance is defined as misappropriation.**