

Chapter 284-12 WAC

INSURANCE PRODUCERS, TITLE INSURANCE AGENTS, SURPLUS LINE BROKERS, AND ADJUSTERS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

284-12-010	Qualifications of agents of insurers authorized to transact more than one kind of insurance—Exceptions. [Order R 76-6, § 284-12-010, filed 11/10/76; Rule dated 5/1/54, filed 3/22/60.] Repealed by WSR 90-04-060 (Order R 90-1), filed 2/2/90, effective 3/5/90. Statutory Authority: RCW 48.02.060.
284-12-024	Waiver of unauthorized alien insurers' financial requirements. [Statutory Authority: RCW 48.02.060, WSR 80-06-039 (Order R-80-6), § 284-12-024, filed 5/12/80.] Repealed by WSR 81-18-038 (Order R 81-4), filed 8/28/81. Statutory Authority: RCW 48.02.060.
284-12-025	Brokers—Surplus line—Qualifications and examination. [Rule dated 1/20/58, filed 3/22/60.] Repealed by WSR 81-18-038 (Order R 81-4), filed 8/28/81. Statutory Authority: RCW 48.02.060.
284-12-026	Surplus line brokers—Must file power of attorney for the service of process. [Rule dated 8/2/54, filed 3/22/60.] Repealed by WSR 79-11-079 (Order R 79-5), filed 10/22/79. Statutory Authority: RCW 48.02.060.
284-12-027	Form for surplus line insurer to designate person to receive legal process. [Statutory Authority: RCW 48.02.060, WSR 79-11-079 (Order R 79-5), § 284-12-027, filed 10/22/79.] Repealed by WSR 81-18-038 (Order R 81-4), filed 8/28/81. Statutory Authority: RCW 48.02.060.
284-12-028	Surplus line brokers' form to be filed; contract stamp to be used. [Statutory Authority: RCW 48.02.060, WSR 79-11-079 (Order R 79-5), § 284-12-028, filed 10/22/79.] Repealed by WSR 81-18-038 (Order R 81-4), filed 8/28/81. Statutory Authority: RCW 48.02.060.
284-12-030	Nonresident agent, broker, or adjuster's license. [Rule dated 11/4/57, filed 3/22/60.] Repealed by WSR 90-04-060 (Order R 90-1), filed 2/2/90, effective 3/5/90. Statutory Authority: RCW 48.02.060.
284-12-040	Adjusters' licenses, RCW 48.14.010, 48.17.050, 48.17-060, 48.17.070, 48.17.110, 48.17.120 and 48.17.380. [Rule dated 11/15/55, filed 3/22/60.] Repealed by WSR 90-04-060 (Order R 90-1), filed 2/2/90, effective 3/5/90. Statutory Authority: RCW 48.02.060.
284-12-090	When general agent may accept applications from non-appointed agents. [Statutory Authority: RCW 48.01-030, 48.02.060(3), 48.14.010 and 48.17.500(3). WSR 94-14-110 (Order R 94-14), § 284-12-090, filed 7/6/94, effective 8/6/94. Statutory Authority: RCW 48.02.060, 48.05.310, 48.30.010 and 48.15.080. WSR 91-23-032 (Order R 91-7), § 284-12-090, filed 11/13/91, effective 1/1/92.] Repealed by WSR 09-02-073 (Matter No. R 2008-06), filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060, 48.17.005.

284-12-100 Twisting. [Rule filed 12/1/61, effective 12/1/61.] Repealed by Order R-68-1 (part), filed 4/23/68, effective 10/1/68.

WAC 284-12-080 Requirements for separate accounts. (1) The purpose of this section is to effectuate RCW 48.15.180, 48.17.600 and 48.17.480 with respect to the separation and accounting of premium funds by insurance producers, title insurance agents and surplus line brokers, collectively referred to in this section as "producers." Pursuant to RCW 48.30.010, the commissioner has found and hereby defines it to be an unfair practice for any producer, except as allowed by statute, to conduct insurance business without complying with the requirements of RCW 48.15.180, 48.17.600 and this section.

(2) All funds representing premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, and return premiums received on Washington business by a producer in his or her fiduciary capacity on or after January 1, 1987, must be deposited in one or more identifiable separate accounts which may be interest bearing.

(a) A producer must not deposit funds other than premiums as defined in RCW 48.18.170, which includes premium taxes and commissions and return premiums to the separate account except as follows:

- (i) Funds reasonably sufficient to pay bank charges;
- (ii) Funds a producer may deem prudent for advancing premiums, or establishing reserves for the paying of return premiums;
- (iii) Funds for contingencies as may arise in the business of receiving and transmitting premiums or return premiums; and
- (iv) Fees paid by insureds as permitted under RCW 48.17.270(2).

(b) A producer may commingle Washington premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, and return premiums with those produced in other states, provided adequate records are maintained to identify the amounts for Washington business. There must be no commingling of any funds not permitted by this section.

(3)(a) The separate account funds must be:

(i) Deposited in a checking account, demand account, or a savings account in a bank, national banking association, savings and loan association, mutual savings bank, stock savings bank, credit union, or trust company located in the state of Washington. The account must be insured by an entity of the federal government; or

(ii) Invested in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States government is pledged for payment of principal and interest, and repurchase agreements collateralized by securities issued by the United States gov-

ernment. Insurers may, of course, restrict investments of separate account funds by their agent.

(b) A nonresident licensee, or a resident producer with affiliated operations under common ownership in two or more states, may utilize comparable accounts in another state provided such accounts otherwise meet the requirements of RCW 48.15.180, 48.17.600, 48.17.480 and this rule, and are accessible to the commissioner for purposes of examination or audit at the expense of the producer.

(4) Disbursements or withdrawals from a separate account must only be made for the following purposes, and in the manner stated:

(a) For charges imposed by a bank or other financial institution for operation of the separate account;

(b) For payments of premiums, directly to insurers or other producers entitled thereto;

(c) For payments of return premiums, which includes premium taxes, directly to the insureds or other persons entitled thereto;

(d) For payments of earned commissions and other funds belonging to the separate account's producer, directly to another account maintained by such producer as an operating or business account, but only to the extent that the premium funds for the policy or policies have actually been deposited into the separate premium account;

(e) For transfer of fiduciary funds, directly to another separate premium account which meets the requirements of this section;

(f) For payment of surplus line premium taxes to the state; and

(g) For payment of earned producer fees, but only to the extent that the fees were originally deposited in the separate premium account.

(5)(a) The funds deposited in the separate premium account must be paid promptly to the insurer or to another producer entitled thereto, in accordance with the terms of any applicable agreement between the parties.

(b) Return premiums received by a producer and the producer's share of any premiums required to be refunded, must be deposited promptly to the separate account. The funds must be paid promptly to the insured or person entitled thereto.

(6)(a) When a producer receives a premium payment in the form of an instrument, such as a check, which is made payable to an insurer, general agent or surplus line broker, the producer may forward the instrument directly to the payee if that can be done without endorsement or alteration. In this case, the producer's separate account is not involved because the producer has not "received" any funds.

(b) If the producer receives a premium payment in the form of cash or an instrument requiring endorsement by the producer, the premium must be deposited into the producer's separate account, unless the insurer entitled to such funds has established other procedures by written direction to a producer who is its appointed agent, which procedures:

(i) Recognize that the producer is receiving premiums directly on behalf of the insurer; and

(ii) Direct the producer to give adequate receipts on behalf of the insurer; and

(ii) Require deposit of the proceeds into the insurer's own account or elsewhere as permitted by the insurer's direction.

Thus, for example, an insurer may utilize the services of a licensed insurance producer, acting as a "captive agent," in the sale of its insurance and in the operation of its places of business, and directly receive payments intended for it without the payments being deposited into and accounted for through the licensed insurance producer's separate account. In these cases, for purposes of this rule, the insurer, as distinguished from the insurance producer, is actually "receiving" the funds and is immediately responsible therefor.

(c) When a producer receives premiums as a surplus line broker, licensed under chapter 48.15 RCW, after a binder or other written evidence of insurance has been issued to the insured, subject to the express written direction of the insurer involved, the premiums, except premium taxes, may be removed from the separate account.

(7) The commissioner recognizes the practical problems of accounting for the small amounts of interest involved spread over a large number of insurers and insureds. Therefore, absent any agreement between the producer and the insured or insurer to the contrary, interest earned on the deposits held in the separate account may be retained by the producer and used to offset bank charges, establish reserves, pay return premiums, or for any of the purposes listed in subsection (2) of this section, or the interest may be removed to the operating account.

(8) A producer must establish and maintain records and an appropriate accounting system for all premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, return premiums, and fees received by the producer, and must make the records available for inspection by the commissioner during regular business hours upon demand during the five years immediately after the date of the transaction.

(9) The accounting system used must effectively isolate the separate account from any operating accounts and segment or identify all Washington business from that of other states. All recordkeeping systems, whether manual or electronic must provide an audit trail so that details underlying the summary data, such as invoices, checks, and statements, may be identified and made available on request. The system must provide the means to trace any transaction back to its original source or forward to final entry, as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the commissioner. A balance forward system (as in an ordinary checking account) is not acceptable.

(10)(a) A producer that is a business entity may utilize one separate account for the funds received by its affiliated persons operating under its license, and the affiliated persons may deposit the funds they receive in this capacity directly into the separate account of their firm or corporation.

(b) Funds received by an insurance producer who is employed by and offices with another insurance producer may be deposited into and accounted for through the separate account of the employing insurance producer. This provision does not, however, authorize the insurance producer

employee to represent an insurer as to which he or she has no appointment.

(11) Premium taxes deposited to the separate premium account are held in trust for the state and must be maintained in the account until paid to the state.

(12) The separate premium account is a fiduciary account and not the personal asset or account of the producer. A producer must not make withdrawals from the account except as provided in this section. The separate premium account must not be encumbered in any manner nor be pledged as collateral for a loan.

(13) For the purposes of this section, a commission is earned no earlier than when the policy is bound or effective.

[Statutory Authority: RCW 48.02.060, 48.17.005, 48.15.180, 48.17.480, and 48.17.600. WSR 12-15-050 (Matter No. R 2011-31), § 284-12-080, filed 7/16/12, effective 8/16/12. Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-12-080, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060, 48.30.-010, 48.17.480 and 48.17.600. WSR 90-04-042 (Order R 90-2), § 284-12-080, filed 1/31/90, effective 3/3/90. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010(2). WSR 88-17-117 (Order R 88-8), § 284-12-080, filed 8/24/88; WSR 87-03-055 (Order R 87-1), § 284-12-080, filed 1/21/87.]

WAC 284-12-095 Unfair practice with respect to use of insurance producer defined. It is an unfair or deceptive practice and an unfair method of competition pursuant to RCW 48.30.010 for an authorized insurer to cancel or refuse to renew any insurance policy because its contract or arrangement with an appointed or a nonappointed insurance producer through whom such policy was written has been terminated.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-12-095, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060, 48.05.310, 48.30.010 and 48.15.080. WSR 91-23-032 (Order R 91-7), § 284-12-095, filed 11/13/91, effective 1/1/92.]

WAC 284-12-110 Identification of an insurance producer to a prospective insured. It shall be an unfair practice for an insurance producer initiating a sales presentation away from his or her office to fail to inform the prospective purchaser, prior to commencing the sales presentation, that the insurance producer is acting as an insurance producer, and to fail thereafter to inform the prospective purchaser of the full name of the insurance company whose product the insurance producer offers to the buyer. This rule shall apply to all lines of insurance and to all coverage solicited in this state including coverage under a group policy delivered in another state, whether or not membership in the group is also being solicited.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-12-110, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 88-24-053 (Order R 88-12), § 284-12-110, filed 12/7/88.]

MANAGING GENERAL AGENTS

WAC 284-12-200 Operating in this state. A managing general agent is "operating in this state" for purposes of the Managing General Agents Act (chapter 48.— RCW, sections 34-42, chapter 462, Laws of 1993) ("the act") section 38(5), chapter 462, Laws of 1993, if he or she does in Washington any act for which a license is required by the act or chapter

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48.17, or does in Washington any activities listed in section 35 (3)(a)(i) or (ii), chapter 462, Laws of 1993.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-200, filed 9/1/93, effective 10/2/93.]

WAC 284-12-210 Affiliates. "Affiliates" as used in section 35 (3)(a), chapter 462, Laws of 1993, has the meaning indicated in RCW 48.—, section 2, chapter 462, Laws of 1993.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-210, filed 9/1/93, effective 10/2/93.]

WAC 284-12-220 Licensed in this state. A person is licensed in this state for purposes of RCW 48.98.010 (1) and (2), if the person holds a resident or nonresident insurance producer's license issued by the commissioner.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-12-220, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-220, filed 9/1/93, effective 10/2/93.]

WAC 284-12-230 Notification of appointment. When notifying the commissioner of the appointment of a managing general agent under section 38(5), chapter 462, Laws of 1993, in addition to the information specified there, the insurer shall include the following information about the appointee:

- (1) Current address;
- (2) Other addresses in the past five years;
- (3) What licenses are held, and which states issued them;
- (4) Whether any license has ever been revoked, suspended, or not renewed, and whether any disciplinary action has ever been taken or is now being considered by an insurance regulatory official or officer, and if so, give details.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-230, filed 9/1/93, effective 10/2/93.]

WAC 284-12-250 Employee. Whether a person is an "employee" of the insurer for purposes of section 35 (3)(b)(i), chapter 462, Laws of 1993, depends on the facts and is not controlled by a mere labelling of the person as an employee in an agreement.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-250, filed 9/1/93, effective 10/2/93.]

WAC 284-12-260 Form of financial statements. The independent audited financial statements required by section 38(1), chapter 462, Laws of 1993, shall be in such a form that they clearly show the results of operations, and the assets, liabilities, and equity of the managing general agent, and the income and expense attributable to acting as managing general agent for the insurer. Nothing in the act or this regulation (WAC 284-12-200 through 284-12-260) prevents the insurer from requiring additional information, more detail, or a specified format so long as that specified format at least meets the requirements of this section.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-260, filed 9/1/93, effective 10/2/93.]

WAC 284-12-270 Expiration and renewal of appointments. Appointments of managing general agents

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shall be for two years. They expire unless timely renewed. They expire on the same date that insurance producer appointments for the same insurer expire under WAC 284-17-410.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-12-270, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.01.030, 48.02.060(3), 48.14.010 and 48.17-500(3). WSR 94-14-110 (Order R 94-14), § 284-12-270, filed 7/6/94, effective 8/6/94. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-270, filed 9/1/93, effective 10/2/93.]

WAC 284-12-280 Claim thresholds. The claim threshold under sections 35 (3)(a)(i) and 37 (7)(b)(i) and (v), chapter 462, Laws of 1993, is twenty thousand dollars.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 41. WSR 93-19-009 (Order R 93-13), § 284-12-280, filed 9/1/93, effective 10/2/93.]