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## **REGULATORY COMPLIANCE – RETENTION OF BUSINESS RECORDS**

By Mark B. Robinson

Most of us dread record keeping of any type, whether it is logging our expenses, travel mileage, billable hours, laps on the treadmill or the birthday presents that we have given to our family friends. Though tedious, record keeping, especially in business is necessary for the continued success and future maturation of our careers, our businesses and our industries at large.

Record retention is essential for Insurance brokers and agents and is in fact mandated by the state. They are required to maintain business records for a designated period of time. *California Insurance Code* §1727. The records must be open to inspection or examination by the Commissioner of the California Department of Insurance (“Department”) and must be available for inspection at the request of the Department. The Department promulgated Section 2190, *et seq.* of the *California Code of Regulations*, Title X (“Regulations”), which set forth the types of records and length of time that the records must be maintained by brokers and agents. The Regulations apply to every agent, broker, surplus lines broker or special lines surplus lines broker licensed by the Department.

### **What Records Must Be Maintained By Agents And Brokers?**

Section 2190.2 of the Regulations require brokers and agents to maintain for at least five (5) years after the expiration or cancellation date of the policy to which the records pertain the following types of records:

- Name of the insured and insurer;
- Policy number;
- Effective, termination, and cancellation dates of coverage;
- Amount of gross premium, net premium, and commission;

- Names of persons who receive or are promised any commissions or other consideration related to the transaction;
- Amount of premium received;
- Date premium received by the agent or broker;
- Date the premium is deposited into a trust account;
- Name, address of bank, and account number in which the premium is deposited;
- Date the premium is paid by the agent or broker to a person entitled thereto with identification of how the premium was transferred;
- Amount of net and gross premium returned;
- Date the returned premium is received from the insurer by the agent or broker or the date credited to such account; and
- Date gross return premium is remitted to the person entitled thereto.

The following records must be maintained by the broker or agent for at least eighteen (18) months after the transaction described by such records:

- Identity of each person who transacted the insurance;
- Records of all binders, whether written or oral, showing the names of the insured and insurer, the nature of the coverage, the effective and termination dates, and premium for the binder or policy to be issued;
- A copy of the application; and
- Correspondence received, sent, including notes of conversations or any other records necessary to describe the transaction.

Documents pertaining to surplus lines, such as the diligent search form and disclosure statement, must be maintained for at least five (5) years from the expiration or cancellation date of the policy. Further, the original of such diligent search form and disclosure statement must be maintained by the party who signs such document.

### **What Type Of Bank Records Must Be Maintained?**

Section 2190.5 requires an agent or broker to maintain bank account statements for all accounts into which premiums are deposited or maintained, including trust accounts; records of all deposits of such premiums; and copies of cancelled checks drawn on or records of withdrawal of funds from such accounts including trust accounts.

Additionally, if the broker's or agent's customer designates that the premiums be maintained in an interest bearing account, records must be maintained of such account.

### **Where Must The Records Be Kept?**

All of the records identified above and designated in Sections 2190.2, 2190.4, 2190.5 and 2190.6 shall be maintained in the agent or broker's principal office in the State of California unless specifically authorized otherwise by the Department. Records retained by a non-resident surplus lines broker and non-resident surplus lines surplus lines broker must be maintained in the principal office in the state in which such broker is licensed as a resident surplus lines broker or resident lines surplus lines broker.

The records must be maintained in an orderly manner so that the information is readily available to the Department for inspection and examination at all times. One (1) year after cancellation or termination of a policy, the records may be maintained offsite so long as they are retrievable within two (2) business days. Records that are required to be maintained in the broker or agent's principal office may be maintained in a secondary office subject to prior approval of the Department.

### **May The Records Be Imaged?**

The records described in Section 2190, *et seq.* may be imaged in lieu of maintaining hard copies, except for the originally signed diligent search form and disclosure statement required under *Insurance Code* §§1763 and 1764.1. Accordingly, a broker or agent may maintain all required documents in a digital format.

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