

**31A-26-215 Temporary license -- Appointment of trustee for terminated licensee's business.**

- (1)
  - (a) The commissioner may issue a temporary insurance adjuster license:
    - (i) to a person listed in Subsection (1)(b):
      - (A) if the commissioner considers that the temporary license is necessary:
        - (I) for the servicing of an insurance business in the public interest; and
        - (II) to provide continued service to the insureds who are being serviced in a circumstance described in Subsection (1)(b);
      - (B) for a period not to exceed 180 days; and
      - (C) without requiring an examination; or
    - (ii) in any other circumstance:
      - (A) if the commissioner considers the public interest will best be served by issuing the temporary license;
      - (B) for a period not to exceed 180 days; and
      - (C) without requiring an examination.
  - (b) The commissioner may issue a temporary insurance producer license in accordance with Subsection (1)(a) to:
    - (i) the surviving spouse or court-appointed personal representative of a licensed insurance adjuster who dies or acquires a mental or physical disability to allow adequate time for:
      - (A) the sale of the insurance business owned by the adjuster;
      - (B) recovery or return of the adjuster to the business; or
      - (C) the training and licensing of new personnel to operate the adjuster's business;
    - (ii) to a member or employee of a business entity licensed as an insurance adjuster upon the death or disability of an individual designated in:
      - (A) the business entity application; or
      - (B) the license; or
    - (iii) the designee of a licensed insurance adjuster entering active service in the armed forces of the United States of America.
- (2) If a person's license is terminated under Section 31A-26-213, the commissioner may appoint a trustee to provide in the public interest continuing service to the insureds who procured insurance through the person whose license is terminated:
  - (a) at the request of the person whose license is terminated; or
  - (b) upon the commissioner's own initiative.
- (3) This section does not apply if the deceased or disabled adjuster has not owned or does not own an ownership interest in the accounts and associated expiration lists that were previously serviced by the adjuster.
- (4)
  - (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:
    - (i) require a temporary licensee to have a suitable sponsor who:
      - (A) is a licensed producer; and
      - (B) assumes responsibility for all acts of the temporary licensee; or
    - (ii) impose other requirements that are:
      - (A) designed to protect the insureds and the public; and
      - (B) similar to the condition described in Subsection (4)(a)(i).
  - (b) A trustee appointed under Subsection (2) shall receive the trustee's appointment and perform the trustee's duties subject to the conditions listed in Subsections (4)(b)(i) through (xv).

- (i) A trustee appointed under this section shall be licensed under this chapter to perform the services required by the trustor's clients.
  - (ii) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on the trustee's own behalf in business as an adjuster.
  - (iii) The commissioner shall only select a person to act as trustee who is trustworthy and competent to perform the necessary services.
  - (iv) If the deceased, disabled, or unlicensed person for whom the trustee is acting is an associated adjuster, the insurers through or with which the former adjuster's business was associated shall cooperate with the trustee in allowing the trustee to service the claims associated with or through the insurer.
  - (v) The trustee shall abide by the terms of any agreement between the former adjuster and the associated insurer, except that terms in those agreements terminating the agreement upon the death, disability, or license termination of the former agent do not bar the trustee from continuing to act under the agreement.
  - (vi) The commissioner shall set the trustee's compensation which:
    - (A) may be stated in terms of a percentage of commissions;
    - (B) shall be equitable; and
    - (C) paid exclusively from:
      - (I) the commissions generated by the former adjuster's accounts serviced by the trustee; and
      - (II) other funds the former adjuster or the former adjuster's successor in interest agree to pay.
  - (vii) The trustee has no special priority to commissions over the former adjuster's creditors.
  - (viii) The following may not be held liable for errors or omissions of the former adjuster or the trustee:
    - (A) the commissioner; or
    - (B) the state.
  - (ix) The trustee may not be held liable for errors and omissions that were caused in any material way by the negligence of the former adjuster.
  - (x) The trustee may be held liable for errors and omissions that arise solely from the trustee's negligence.
  - (xi) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided to the trustee by:
    - (A) the former adjuster; or
    - (B) the former adjuster's successor in interest.
  - (xii) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.
  - (xiii) The trustee may not purchase the accounts or expiration lists of the former adjuster, unless the commissioner expressly ratifies the terms of the sale.
  - (xiv) The commissioner may adopt rules that:
    - (A) further define the trustee's fiduciary duties; and
    - (B) explain how the trustee is to carry out the trustee's responsibilities.
  - (xv) The trust may be terminated by:
    - (A) the commissioner; or
    - (B) the person that requested the trust be established.
- (c) A person described in Subsection (4)(b)(xv)(B) shall terminate the trust by sending written notice to:
- (i) the trustee; and

(ii) the commissioner.

(5)

(a) The commissioner may by order limit the authority of any temporary licensee or trustee in any way considered necessary to protect:

(i) persons being serviced; and

(ii) the public.

(b) The commissioner may by order revoke a temporary license or trustee's appointment if the interest of persons being serviced or the public are endangered.

(c) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Amended by Chapter 366, 2011 General Session