

STATE OF MONTANA
Commissioner of Securities and Insurance
Office of the State Auditor
840 Helena Avenue
Helena, MT 59601

APPLICATION REQUIREMENTS FOR REGISTRATION - ADMINISTRATORS

- 1) Completion and submission of Application Form SAI-TPA.2018 (copy enclosed), including the affirmation of intended compliance with all controlling Montana Codes Annotated (MCA's) for a Montana Administrator (as attached).
- 2) If a partnership, corporation, or association, please include a copy of the partnership agreement, or articles of incorporation, or articles of association.
- 3) A current NAIC biographical affidavit for each individual, member, officer, or owner of applicant and each person to be authorized to act under the registration as identified in Item #7 on the application. (One copy enclosed. Make additional copies if needed.)
- 4) Filing Fee of \$100 to be submitted with the application.
- 5) A detailed explanation of the company's business plans for Montana including the marketing of its services.
- 6) If applicant is using a d/b/a, provide authority to use such business name from the appropriate regulatory official from your state of domicile.
- 7) Financial statements including a balance sheet (reporting positive net worth) and an income statement for the most recent complete calendar or fiscal year. Audited financial statements are to be submitted if available.

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APPLICATION FOR CERTIFICATE OF REGISTRATION - ADMINISTRATORS

To the COMMISSIONER OF SECURITIES AND INSURANCE

1. Name of Applicant _____
(Name under which business is to be transacted and registration is to be issued.)

FEIN#: _____ State of Domicile: _____

2. D/B/A (if applicable) _____

3. _____
Principal Administrative Office Address

Phone Number

Fax Number

Company Email Address

4. _____
Mailing Address (if different)

Branch Offices (if any)

5. Names of all insurance companies for whom you will provide administrative services in Montana

6. Type of business organization (check one):
_____ Individual _____ Partnership _____ Association _____ Corporation _____ LLC

7. Give full names, titles and addresses of all members, or officers, or owners, or other authorized individuals of the applicant who are controlling the activities of the administrator (submit a current NAIC Biographical Affidavit for each).

FULL NAME

TITLE

ADDRESS

DO YOU, AS THE APPLICANT, AND ALL PERSONS NAMED ABOVE, AGREE AS FOLLOWS:

PLEASE ANSWER WITH A YES OR A NO.

1. Does the applicant agree that, if registration is issued, only those persons named above will be permitted to control the activities of the administrator? _____
2. To maintain in accordance with prudent standards of insurance recordkeeping, adequate books and records of all transactions between you, the insurers, and the insured persons, for the duration of the required written agreement and for 5 years thereafter? _____
3. To maintain the above-mentioned books and records at your principal administrative office? _____
4. To allow the Commissioner of Insurance access to the above-mentioned books and records for examination, audit, or inspection? _____
5. To provide a written notice, approved by the insurer, to insured individuals advising them of the identity of a relationship between you, the policyholder, and the insurer? _____

_____(name) being duly sworn, deposes that he/she is the _____(title of official capacity) of the above-named applicant and that the foregoing is a full, true, and correct statement of all the facts concerning this application. I understand that pursuant to Section 33-17-1001, MCA, any false statement contained in any document concerning this application may subject all licenses issued to me and this organization to suspension, or revocation, or other administrative action.

Signature

Subscribed and sworn to before me this _____ day of _____, 20_____.

Signature

BIOGRAPHICAL AFFIDAVIT

<http://csimt.gov/wp-content/uploads/NAIC-Biographical-Affidavit-Form-2015.pdf>

33-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer;

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(v) claims examiner as defined in 39-71-116.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster or a public adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(5) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.

(7) "Exchange" means a health benefit exchange established by the state of Montana or an exchange established by the United States department of health and human services in accordance with 42 U.S.C. 18031.

(8) "Home state" means the District of Columbia or any state or territory of the United States in which a person licensed under this chapter maintains a principal place of residence or a principal place of business.

(9) "Individual" means a natural person.

(10) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(11) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

(12) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(13) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

(14) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(15) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

(16) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(17) "Lines of authority" means any kind of insurance as defined in Title 33.

(18) "Navigator" means a person certified by the commissioner under 33-17-241 and selected to perform the activities and duties identified in 42 U.S.C. 18031, et seq.

(19) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

(20) "Person" means an individual or a business entity.

(21) (a) "Public adjuster" means an adjuster retained by and representing the interests of the insured.

(b) The term does not include a person who provides an estimate of work to an insurer on behalf of an insured as long as the insured is notified of all communications between the person and the insurer related to the estimates.

(22) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

(23) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(24) "Suspend" means to bar the use of a person's license for a period of time.

History: En. Secs. 146, 147, 148, 150, Ch. 286, L. 1959; R.C.M. 1947, 40-3302, 40-3303(part), 40-3304, 40-3306; amd. Sec. 5, Ch. 518, L. 1983; amd. Sec. 1, Ch. 409, L. 1987; amd. Sec. 18, Ch. 713, L. 1989; amd. Sec. 25, Ch. 798, L. 1991; amd. Sec. 49, Ch. 379, L. 1995; amd. Sec. 24, Ch. 531, L. 1997; amd. Sec. 3, Ch. 106, L. 2001; amd. Sec. 10, Ch. 427, L. 2003; amd. Sec. 1, Ch. 140, L. 2005; amd. Sec. 12, Ch. 469, L. 2005; amd. Sec. 4, Ch. 313, L. 2009; amd. Sec. 11, Ch. 169, L. 2013; amd. Sec. 6, Ch. 245, L. 2013; amd. Sec. 3, Ch. 139, L. 2015; amd. Sec. 17, Ch. 151, L. 2017.

Part 6 Administrators

33-17-601. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 1, Ch. 343, L. 1979; amd. Sec. 10, Ch. 409, L. 1987.

33-17-602. Written agreement required. (1) A person may not act as an administrator without a written agreement between the person and the insurer. The written agreement must be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement must contain provisions that include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement must contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by the insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments to it must be furnished to the insurer by the administrator and be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

History: En. Sec. 2, Ch. 343, L. 1979; amd. Sec. 11, Ch. 409, L. 1987; amd. Sec. 44, Ch. 713, L. 1989.

33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, a person may not act as or represent to the public that the person is an administrator in this state unless the person holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of \$100. The commissioner shall issue the certificate unless the commissioner finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for a license denied for cause within 5 years.

(3) A certificate of registration must be renewed each year by the administrator paying a continuation fee of \$100 on or before July 1. Upon payment, the certificate continues in force unless suspended, revoked, or otherwise terminated. The commissioner shall deposit the fee with the state treasurer to be credited to the general fund.

(4) A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless a certification requirement is waived, a person who acts as an administrator without a certificate of registration is subject to a fine of not less than \$500 or more than \$1,500.

History: En. Sec. 12, Ch. 343, L. 1979; amd. Sec. 45, Ch. 713, L. 1989; amd. Sec. 8, Ch. 798, L. 1991; amd. Sec. 53, Ch. 379, L. 1995; amd. Sec. 148, Ch. 42, L. 1997.

33-17-604. Waiver of certification requirements. The commissioner may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting a waiver include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of the requirements.

History: En. Sec. 13, Ch. 343, L. 1979; amd. Sec. 46, Ch. 713, L. 1989.

33-17-605. Repealed. Sec. 19, Ch. 409, L. 1987.

History: En. Sec. 10, Ch. 343, L. 1979.

33-17-606 through 33-17-610 reserved.

33-17-611. Maintenance of information. For the duration of the agreement required by 33-17-602 and for 5 years thereafter, each administrator shall maintain at its principal administrative office adequate books and records of all transactions between the administrator, insurers, and insured persons. These books and records must be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to these books and records for examination, audit, or inspection. Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, are confidential, except that the commissioner may use the information in any proceedings instituted against the administrator. The insurer retains the right to continuing access to those books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the administrator.

History: En. Sec. 3, Ch. 343, L. 1979; amd. Sec. 47, Ch. 713, L. 1989.

33-17-612. Approval of advertising. An administrator may use only such advertising pertaining to the business underwritten by an insurer as is approved by the insurer in advance of its use.

History: En. Sec. 4, Ch. 343, L. 1979.

33-17-613. Collection of charges and premiums. (1) All insurance charges or premiums collected by an administrator on behalf of or for an insurer and return premiums received from the insurer are held by the administrator in a fiduciary capacity. These funds must be immediately remitted to the person entitled to them or must be deposited promptly in a fiduciary bank account established and maintained by the administrator. If deposited charges or premiums were collected on behalf of or for more than one insurer, the administrator shall require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all these records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The administrator may not pay a claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account must be made, as provided in the written agreement between the administrator and the insurer, for:

- (a) remittance to an insurer entitled to the remittance;
- (b) deposit in an account maintained in the name of the insurer;
- (c) transfer to and deposit in a claims paying account, with claims to be paid as provided in 33-17-615;
- (d) payment to a group policyholder for remittance to the insurer entitled to the payment;
- (e) payment to the administrator of its commission, fees, or charges; or
- (f) remittance of return premiums to the person entitled to the premium.

History: En. Sec. 5, Ch. 343, L. 1979; amd. Sec. 48, Ch. 713, L. 1989.

33-17-614. Treatment of payments. Whenever an insurer utilizes the services of an administrator under the terms of a written contract as required in 33-17-602, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is considered to be received by the insurer and the payment of return premiums or claims by the insurer to the administrator is not considered payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

History: En. Sec. 6, Ch. 343, L. 1979.

33-17-615. Payment of claims. All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

History: En. Sec. 7, Ch. 343, L. 1979.

33-17-616. Delivery of documents. Any policies, certificates, booklets, termination notices, or other written communications delivered by the insurer to the administrator for delivery to its policyholders shall be delivered by the administrator promptly after receipt of instructions from the insurer to do so.

History: En. Sec. 8, Ch. 343, L. 1979.

33-17-617. Claim adjustment and settlement. With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to the policies shall in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

History: En. Sec. 9, Ch. 343, L. 1979.

33-17-618. Insured persons to be notified of availability of administrator. Whenever the services of an administrator are utilized, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship between the administrator, the policyholder, and the insurer. Whenever an administrator collects funds, the administrator shall identify and state, separately in writing, to the person paying to the administrator any charge or premium for insurance coverage the amount of such charge or premium specified by the insurer for the insurance coverage.

History: En. Sec. 11, Ch. 343, L. 1979.