



Ohio Revised Code

Section 3916.11 Records - examinations.

Effective: September 11, 2008

Legislation: House Bill 404 - 127th General Assembly

(A)(1) A licensee under this chapter shall, for five years, retain copies of all of the following:

(a) All proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later;

(b) All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction;

(c) All other records and documents related to the requirements of this chapter.

(2) This section does not relieve a person of the obligation to produce the documents described in division (A)(1) of this section to the superintendent of insurance after the retention period specified in that division has expired if the person has retained the documents.

(3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(4) If a licensee fails to comply with division (A) of this section, the superintendent may initiate proceedings in accordance with Chapter 119. of the Revised Code to revoke, suspend, or refuse to renew the license of the licensee.

(B)(1) Upon determining that an examination should be conducted, subject to division (E) of this section, the superintendent shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. The superintendent may employ any guidelines or procedures for purposes of this division that the superintendent considers appropriate.



(2) Every licensee, or person from whom information is sought, and all officers, directors, employees, and agents of any licensee, or person from whom information is sought, shall provide to the examiners timely, convenient, and free access at all reasonable hours at the licensee's or person's offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the superintendent shall be grounds for suspension, revocation, denial of issuance, or nonrenewal of any license held by the licensee to engage in the business of viatical settlements or other business subject to the superintendent's jurisdiction. Any proceedings for suspension, revocation, denial, or refusal to renew any license or authority are subject to Chapter 119. of the Revised Code.

(3) The superintendent has the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the superintendent may petition a court of competent jurisdiction, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(4) When making an examination under this chapter, the superintendent may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, and the licensee that is the subject of the examination shall bear the cost of those examiners pursuant to division (F) of this section. Examiners who are appointed by the superintendent, but who are not employees of the department of insurance, shall be compensated for their work, travel, and living expenses at reasonable and customary rates.

(5) Nothing contained in this chapter limits the superintendent's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima-facie evidence in any legal or regulatory action.



(6) Nothing contained in this chapter limits the superintendent's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee working papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the superintendent, in the superintendent's sole discretion, considers appropriate.

(C)(1) Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee, its agents, or other persons examined, or as ascertained from the testimony of its officers, agents, or other persons examined concerning its affairs, and the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) Upon completion of the examination, the examiner in charge shall file with the superintendent a verified written report of examination. Upon receipt of the verified report, the superintendent shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days from receipt of the report to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) If the superintendent determines that regulatory action is appropriate as a result of an examination, the superintendent may initiate any proceedings or actions provided by law.

(D)(1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the superintendent, unless required by law.

(2) Except as otherwise provided in this chapter or in the law of another state or jurisdiction that is substantially similar to this chapter, all examination reports, working papers, recorded information, documents, and copies of those reports, papers, information, documents, and copies produced by, obtained by, or disclosed to the superintendent or to any other person in the course of an examination made under this chapter or under the law of another state or jurisdiction that is substantially similar to this chapter, or in the course of the superintendent's analysis or investigation of the financial condition or market conduct of a licensee are confidential by law and privileged, are not a public record open for inspection under section 149.43 of the Revised Code, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. The superintendent may use the documents, materials, or other information in the furtherance of any



regulatory or legal action brought as part of the superintendent's official duties.

(3) Documents, materials, or other information, including, but not limited to, all working papers, and copies of working papers, in the possession or control of the NAIC and its affiliates and subsidiaries are confidential by law and privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action, if either of the following applies:

(a) They are created, produced, or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this chapter or assisting the superintendent or the comparable official in another state in the analysis or investigation of the financial condition or market conduct of a licensee.

(b) The superintendent or the comparable official in another state discloses them to the NAIC and its affiliates and subsidiaries under division (D)(5) of this section or under a comparable provision in the law of the other state.

(4) Neither the superintendent nor any person that received the documents, material, or other information while acting under the authority of the superintendent, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to division (D)(1) of this section.

(5)(a) In order to assist in the performance of the superintendent's duties, the superintendent may do any of the following:

(i) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to division (D)(1) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(ii) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and



subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions;

(iii) Enter into agreements governing sharing and use of information consistent with this section.

(b) The superintendent shall maintain as confidential or privileged any document, material, or information received under division (D)(5)(a)(ii) of this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in division (D)(5) of this section.

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under division (D) of this section shall be available and enforced in any proceeding in, and in any court of, this state.

(8) Nothing contained in this chapter prevents or prohibits the superintendent from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to those reports or results, to the official of any other state or country that is comparable to the superintendent, or to law enforcement officials of this or any other state or agency of the federal government at any time, or to the NAIC, if the agency or office receiving the report or matters relating to it agrees in writing to hold it confidential and in a manner consistent with this chapter.

(E)(1) The superintendent may not appoint an examiner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to examination under this chapter. This division does not automatically preclude any of the following from being an examiner:

(a) A viator;

(b) An insured in a viaticated policy;



(c) A beneficiary in a policy that is proposed to be viaticated.

(2) Notwithstanding the requirements of division (E) of this section, the superintendent may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

(F)(1) As used in division (F) of this section, "expenses" include all of the following:

(a) Compensation of examiners for each day or portion of a day worked;

(b) Travel and living expenses of examiners;

(c) All other incidental expenses incurred by or on behalf of examiners;

(d) An allocated share of all expenses not described in division (F)(1), (2), or (3) of this section that are necessarily incurred in the performance of a market conduct examination, including the expenses of direct overhead and support staff for examiners.

(2) When a market conduct examination is made of a licensee under this chapter, the licensee shall pay the expenses of the examination. The expenses of an examination include those incurred on or after the date on which the superintendent notifies the licensee of the examination through the issuance of the final examination report.

(3) The superintendent may request the attorney general to initiate a civil action in the court of common pleas of Franklin county to obtain and enforce a judgment for expenses incurred in the performance of a market conduct examination.

(G)(1) No cause of action shall arise nor shall any liability be imposed against the superintendent, any authorized representative of the superintendent, or any examiner appointed by the superintendent for any statements made or conduct performed in good faith while carrying out the provisions of this



chapter.

(2) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the superintendent, any authorized representative of the superintendent, or any examiner appointed by the superintendent pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This division does not abrogate or modify in any way any common law or statutory privilege or immunity previously enjoyed by any person identified in division (G)(1) of this section.

(3) A person identified in division (G)(1) or (2) of this section shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in bringing the action. For purposes of this division, an action is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(H) The superintendent may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.