

Title 210 – NEBRASKA DEPARTMENT OF INSURANCE

Chapter 59 - RULE IMPLEMENTING MANAGING GENERAL AGENTS ACT (AMENDED)

001. Authority. This Rule is promulgated pursuant to the authority granted in the Managing General Agents Act, Neb.Rev.Stat. §§44-4901 to through 44-4910.

002. Purpose. This Rule is promulgated to implement and administer provisions of the Managing General Agents Act.

003. Definitions.

003.01 The definitions in the Managing General Agents Act as set forth in Neb.Rev.Stat. §44-4902 shall apply in the construction of this Rule in addition to the definitions contained herein.

003.02 Managing general agent ~~shall mean~~ means any person, ~~firm, association or corporation~~ who:

003.02A Manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

003.02B Acts as an agent for such insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces directly or indirectly, and underwrites in any one quarter or year an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer; and

003.02C Has authority to:

(a) Adjust or pay any claim exceeding \$5,000 \$10,000,

~~(b) Adjust or pay any third party claim regardless of the amount of the claim,~~

~~(c) Adjust or pay any warranty claim regardless of the amount of the claim, or~~

~~(d) Negotiate reinsurance on behalf of the insurer.~~

-

003.03 Exceptions. Managing general agents ~~shall~~ agent does not include:

003.04A An attorney in fact for a reciprocal or inter-insurance exchange under a power of attorney,

003.04B An employee of the insurer,

003.04C A United States manager of the United States branch of an alien insurer, or

003.04D An underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, and is subject to the Insurance Holding Company System Act and whose compensation is not based on the volume of premium written.

003.04 Gross direct written premium ~~shall include~~ includes all premium written by the managing general agent regardless of where the risks are located.

004. Bond. All managing general agents ~~contracting with domestic insurers~~ shall acquire and maintain a surety bond for the protection of the insurer contracting with the managing general agent. The bond shall be ~~in the amount of \$50,000~~ at least one hundred thousand dollars or ten percent of the managing general agent's total annual written premium nationwide produced by the managing general agent for the insurer in the prior calendar year, whichever is greater, but not greater than five hundred thousand dollars. Coverage shall not be written by the insurer or an affiliate of the insurer contracting with the managing general agent. The bond shall be executed by an insurer admitted to do business in Nebraska or by an insurer operating in compliance with the Nebraska Surplus Lines Act with coverage placed through a surplus lines licensee licensed by the Director. The bond shall be executed on a form approved by the Department and a copy of the executed bond shall be ~~filed with the Director~~ kept on file for review by any applicable state insurance director, superintendent, or commissioner.

005. Errors and Omissions Policy. All managing general agents ~~contracting with domestic insurers~~ shall acquire and maintain an errors and omissions insurance policy. The policy coverage limits shall be set at \$250,000. The errors and omissions policy shall be issued by an insurer admitted to do business in the State of Nebraska or by an insurer operating in compliance

~~with the Nebraska Surplus Lines Act with coverage placed through a surplus lines licensee licensed by the Director. Coverage shall not be written by the insurer or an affiliate of the insurer contracting with the managing general agent. Proof of insurance shall be filed with the Department and shall remain confidential.~~

006. Records Retention.

~~006.01~~ 005.01 Any contract entered into between a managing general agent and a domestic insurer shall be retained by the The insurer shall retain any contract entered into between a managing general agent and an insurer.

~~006.02~~ 005.02 Every licensed managing general agent shall keep at his, her or its place of business the usual and customary records pertaining to transactions under his, her or its license. All books, bank accounts and records shall be kept available and open to the inspection of the director or his or her representatives at any time during business hours. Records shall be maintained for 25 years following the completion of a liability insurance transaction, seven years following completion of a property insurance transaction, or until any statute of limitations period applicable to potential claims arising thereunder has expired, whichever is later.

~~006.03~~ 005.03 If the contract between an insurer and a managing general agent is terminated for any reason, the managing general agent shall, upon request by the insurer, deliver all records to the insurer within 90 days of the request.

~~006.04~~ 005.04 A If the contract between an insurer and a managing general agent permits the managing general agent to settle claims on behalf of the insurer, the managing general agent shall send the insurer a claim file as soon as it becomes known that such claim might exceed a limit set by the insurer or one-quarter of one percent of the policyholder surplus as reported in the last annual statement of the insurer, whichever is less.

~~006.05~~ 005.05 A If the contract between an insurer and a managing general agent permits the managing general agent to settle claims on behalf of the insurer, the managing general agent shall send the insurer a claim file as soon as it becomes known that the claim file is closed by payment of an amount set by the insurer or an amount in excess of one-quarter of one percent of the policyholder surplus as reported in the last annual statement of the insurer, whichever is less.

007 006. Reporting Requirements.

~~007.01~~ 006.01 A domestic insurer shall file with the Department a current list of names and addresses of all managing general agents with which it has a contract, and the name of an officer of the insurer responsible for the contract. The insurer shall provide written notification of changes to the list on a continuing basis.

~~007.02~~ 006.02 A domestic insurer shall file with the Department the name of the officer of the insurer responsible for binding reinsurance contracts in order to demonstrate compliance with Neb.Rev.Stat. §44-4906(4).

008. 007. Independent Audit or Examination.

~~008.01~~ An independent audit by a certified public accountant shall be conducted annually for managing general agents currently under contract, and shall be contracted for by the insurer. The independent audit shall include the following:

~~008.01A~~ Report of independent certified public accountant,

~~008.01B~~ Balance sheet,

~~008.01C~~ Statement of income,

~~008.01D~~ Statement of cash flows,

=

=

=

=

=

~~008.01E~~ Statement of income and retained earnings,

~~008.01F~~ Notes to financial statements. These notes shall be those required by generally accepted accounting principles,

~~008.01G~~ A copy of a management letter or a narrative statement setting forth what would have been the content of the management letter had such letter been completed; and

~~008.01H~~ Verification of amount of direct written premium for previous calendar year.

~~008.02~~ 007.01 An insurer shall retain a current independent audit by a certified public accountant of each managing general agent with which the insurer has done business.

~~008.03~~ 007.02 A managing general agent may be examined by the Department as if it were an insurer. The Department shall retain authority to examine a managing

general agent notwithstanding termination of the managing general agent's contractual authority. The expense of such examination shall be reimbursed to the Department by the insurer employing the managing general agent according to the provisions of ~~Neb. Rev. Stat. §§ 44-107 to 44-107.03~~ the Insurers Examination Act.

~~009.008. Severability. If any section or portion of a section of this rule or the applicability thereof to any person or circumstance is held invalid by a court, a court holds any section or portion of a section of this rule or the applicability thereof to any person or circumstance invalid~~ the remainder of the rule or the applicability of such provision to other persons or circumstances shall not be affected thereby.