

**NEBRASKA DEPARTMENT OF INSURANCE
BOND FOR MANAGING GENERAL AGENTS**

KNOW ALL BY THESE PRESENTS THAT we _____, as Principal and, _____ as Surety, are held and firmly bound unto the State of Nebraska as Obligee, for the benefit and protection of insureds and of insurers domiciled in the State of Nebraska whose monies the Managing General Agent handles, in the amount of, _____ (\$_____) lawful money of the United States, for the payment of which we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally.

WHEREAS, the Director of Insurance for the State of Nebraska shall license Managing General Agents in accordance with the Managing General Agents Act, Neb.Rev.Stat. §44-4903 et seq. and Rule 59 of Title 210 of the Nebraska Administrative Code which requires Managing General Agents contracting to perform services for an insurer domiciled in the State of Nebraska, to post a bond to secure performance in conformity with the Managing General Agents Act and Rule 59.

WHEREAS, the above-named Principal has made application for such license and, pursuant to section 004 of Rule 59, is required to post a bond to secure the performance of the Managing General Agent in conformity with the Managing General Agents Act and Rule 59.

WHEREAS, the above-named Surety is authorized to transact surety business in the State of Nebraska.

NOW THEREFORE, if the Director of Insurance shall grant a license referred herein, and all agents and employees representing the Principal shall faithfully and lawfully conform to and abide by the provisions of the Managing General Agents Act and any rules promulgated thereunder, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

IT IS AGREED THAT THE FOLLOWING CONDITIONS APPLY:

1. That any person who sustains an injury covered by this bond may bring an action in his own name upon this bond for recovery of any damages sustained by such person;
2. That the total aggregate liability of the surety on this bond shall be limited to the payment of _____ dollars (\$_____)
- 3 It is understood and agreed that this bond take effect on the _____ day of _____, 20____ and shall be continuous in nature and shall remain in force until canceled by the underwriter or released by the Director; and
4. It is further understood and agreed that if the surety so elects, this bond may be canceled only upon giving sixty (60) day notice in writing to the Director and Principal. Cancellation by the surety shall not affect any liability or obligation incurred or accrued prior to the effective date of the cancellation.

IN WITNESS WHEREOF, the Principal and Surety have caused this bond to be executed and set their hands and seals this _____ day of _____, 20_____.

Principal Name

Witnesses:

Principle Signature

(as to Principal)

Surety Name

(as to Surety)

Attorney-in-Fact Signature

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REQUIREMENTS FOR TRANSACTING BUSINESS AS A MANAGING GENERAL AGENT

Article 49

Section 44-4901 Act, how cited.

Sections 44-4901 to 44-4910 shall be known and may be cited as the Managing General Agents Act.

Section 44-4902 Terms, defined.

For purposes of the Managing General Agents Act:

- (1) Actuary means a person who is a member in good standing of the American Academy of Actuaries;
- (2) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;
- (3) Director means the Director of Insurance;
- (4) Insurer means any person duly licensed in this state as an insurance company pursuant to Chapter 44;
- (5) Managing general agent means any person who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and 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 policyholders surplus as reported in the last annual statement of the insurer in any one quarter or year and who (a) adjusts or pays claims in excess of ten thousand dollars or (b) negotiates reinsurance on behalf of the insurer. Managing general agent does not include an attorney in fact for a reciprocal or interinsurance exchange under a power of attorney, an employee of the insurer, a United States manager of the United States branch of an alien insurer, or 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 premiums written;
- (6) Person means an individual or a business entity; and
- (7) Underwrite means the authority to accept or reject risk on behalf of the insurer.

Section 44-4903 License; requirements.

No person shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless such person is licensed in accordance with the Insurance Producers Licensing Act. No person shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed in accordance with such act.

Section 44-4904 Contract; requirements.

No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, if both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;
- (2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in an institution that is insured by the Federal Deposit Insurance Corporation. The account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the managing general agent will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer, and the director shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the director. Such records shall be retained as determined by the director;
- (5) The contract may not be assigned in whole or in part by the managing general agent;
- (6) Appropriate underwriting guidelines, including:
 - (a) The maximum annual premium volume;
 - (b) The basis of the rates to be charged;
 - (c) The types of risks which may be written;
 - (d) Maximum limits of liability;
 - (e) Applicable exclusions;
 - (f) Territorial limitations;
 - (g) Policy cancellation provisions; and
 - (h) The maximum policy period. The insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable insurance statutes and regulations;
- (7) The insurer shall require the managing general agent to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be 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;
- (8) The insurer may require the managing general agent to maintain an errors and omissions policy;
- (9) If the contract permits the managing general agent to settle claims on behalf of the insurer:
 - (a) All claims must be reported to the insurer in a timely manner;
 - (b) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:
 - (i) Has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less;
 - (ii) Involves a coverage dispute;
 - (iii) May exceed the managing general agent's claims settlement authority;
 - (iv) Is open for more than six months; or
 - (v) Is closed by payment of an amount set by the director or an amount set by the insurer, whichever is less;
 - (c) All claim files will be the joint property of the insurer and the managing general agent. Upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate, and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis; and

- (d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination;
- (10) If electronic claims files are in existence, the contract must address the timely transmission of the data;
- (11) The managing general agent shall use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use; and
- (12) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits will not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 44-4906.

Section 44-4905 Managing general agent; prohibited acts.

The managing general agent shall not:

- (1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
- (2) Commit the insurer to participate in insurance or reinsurance syndicates;
- (3) Appoint any agent or broker without assuring that the agent or broker is lawfully licensed to transact the type of insurance for which he or she is appointed;
- (4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's policyholders surplus as of December 31 of the last-completed calendar year;
- (5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;
- (6) Permit subagents or subbrokers of the insurer appointed by the managing general agent to serve on the insurer's board of directors;
- (7) Jointly employ an individual who is employed by the insurer; or
- (8) Appoint a submanaging general agent.

Section 44-4906 Insurer; duties.

- (1) The insurer shall have on file an independent audited financial examination or reports for the two most recent fiscal years that prove that the managing general agent has a positive net worth. If the managing general agent has been in existence for less than two fiscal years, the managing general agent shall include financial statements or reports, certified by an officer of the managing general agent and prepared in accordance with generally accepted accounting principles, for any completed fiscal years and for any month during the current fiscal year for which such financial statements or reports have been completed.

An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: (a) Amounts shown on the consolidated audited financial/annual report shall be shown on the worksheet; (b) amounts for each entity shall be stated separately; and (c) explanations of consolidating and eliminating entries.

- (3) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. The opinion shall be in addition to any other required loss reserve certification.
- (4) The insurer shall periodically, at least semiannually, conduct an onsite review of the underwriting and claims-processing operations of the managing general agent.
- (5) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who is not affiliated with the managing general agent.
- (6) Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the director. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the director may request.
- (7) An insurer shall each quarter review its books and records to determine if any producer has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the director of such determination and the insurer and producer shall fully comply with the Managing General Agents Act within thirty days.
- (8) No officer, director, employee, subproducer, or controlling shareholder of the insurer's managing general agent shall be appointed to its board of directors. This subsection shall not apply to relationships governed by the Insurance Holding Company System Act.
- (8) The insurer shall keep the bond required by subdivision (7) of section 44-4904 on file for review by any applicable state insurance director, superintendent, or commissioner.

Section 44-4907 Acts of agent; how treated; examination authority.

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined by the department as if it were the insurer.

Section 44-4908 Violations; penalties; action for damages; construction of act.

- (1) If the director determines that the managing general agent or any other person has not materially complied with the Managing General Agents Act, any rule or regulation adopted or promulgated thereunder, or any order issued thereunder, after notice and opportunity to be heard in accordance with the Administrative Procedure Act, the director may:
 - (a) For each separate violation, order a penalty in an amount not exceeding five thousand dollars;
 - (b) Order revocation or suspension of the agent's or broker's license; and
 - (c) If it was found that because of such material noncompliance that the insurer has suffered any loss or damage, maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of damages for the benefit of the insurer and its policyholders and creditors and other appropriate relief.

- (2) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the receiver appointed under the order determines that the managing general agent or any other person has not materially complied with the Managing General Agents Act, any rule or regulation adopted and promulgated thereunder, or any order issued thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages and other appropriate relief for the benefit of the insurer.
- (3) This section shall not affect the right of the director to impose any other penalties provided for in Chapter 44.
- (4) The Managing General Agents Act is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, and auditors.

Section 44-4909 Rules and regulations.

The director shall adopt and promulgate reasonable rules and regulations for the implementation and administration of the Managing General Agents Act.

Section 44-4910 Compliance with act; when.

No insurer may continue to utilize the services of a managing general agent on and after January 1, 1991, unless such utilization is in compliance with the Managing General Agents Act.