

Chapter Ins 42

MANAGING GENERAL AGENTS

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Note: Chapter Ins 42 was created as an emergency rule effective March 12, 1993.

**Ins 42.01 Definitions.** In this chapter:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Insurer" means an insurer as defined under s. 600.03 (27), Stats., which has a certificate of authority under ch. 611, 612, 613, 614 or 618, Stats.

(3) (a) "Managing general agent" means any person not excluded under par. (b), including, but not limited to, a natural person, who, in or outside this state:

1. Manages all or part of the insurance business of an insurer or manages a separate division, department or underwriting office;

2. Acts as an agent for the insurer; and

3. With or without the authority, either separately or together with affiliates, directly or indirectly:

a. Produces and underwrites in any one quarter or year an amount of gross direct written premium equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer; and

b. Adjusts or pays claims in any one quarter or year in excess of 3% of the policyholder surplus as reported in the last annual statement of the insurer, or negotiates reinsurance on behalf of the insurer, or both.

(b) The following persons are not managing general agents:

1. A person who is not an intermediary under s. 628.02 (1) (b), Stats.;

2. An employee of the insurer;

3. A manager of the United States branch of an alien insurer;

4. An underwriting manager which, under a written contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to ch. 617, Stats., and ch. Ins 40, or the laws and rules of another state which are substantially similar to ch. 617, Stats., and ch. Ins 40, and whose compensation is not based on the volume of premiums written; and

5. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(4) "Policyholder surplus" means capital and surplus.

(5) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

**Ins 42.02 Licensure required.** (1) No person, including, but not limited to, a natural person, may act as a managing general agent for an insurer with respect to a risk located in this state unless the person is licensed as a managing general agent under s. 628.04 or 628.09, Stats.

(2) No person, including, but not limited to, a natural person, may act as a managing general agent representing an insurer domiciled in this state with respect to a risk located outside this state unless the person is licensed as a managing general agent under s. 628.04 or 628.09, Stats.

(3) No insurer, and no officer or director of an insurer, may knowingly assent to or permit a person to act as a managing general agent for the insurer if the person fails to comply with this chapter.

(4) The commissioner may require a managing general agent to maintain a bond in an amount acceptable to the commissioner for the protection of each insurer for which the person acts as managing general agent.

(5) The commissioner may require a managing general agent to maintain an errors and omissions policy.

(6) The commissioner may refuse to issue, suspend, summarily suspend or revoke the license of a managing general agent for violation of chs. 600 to 645, Stats., any rule adopted under chs. 600 to 645, Stats., or on any grounds described in s. 628.10, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

**Ins 42.03 Required contract provisions.** No person may act as a managing general agent for an insurer unless the person first enters into and subsequently complies with a written contract between the parties which sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, specifies the division of the 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 a financial institution which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than 3 months estimated claims payments and allocated loss adjustment expenses.

(4) The managing general agent will maintain separate records of business written by the managing general agent for the insurer. The insurer shall have access to, and the right to copy, all accounts and records re-

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lated to its business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable by the commissioner. The managing general agent shall retain records according to ss. Ins 6.61 and 6.80.

(5) The managing general agent may not assign the contract in whole or in part.

(6) Appropriate underwriting guidelines including, but not limited to:

- (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.

(7) The insurer may cancel or nonrenew any policy of insurance subject to the applicable laws and rules.

(8) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) The managing general agent shall report all claims to the insurer in a timely manner.

(b) The managing general agent shall send a copy of the claim file to the insurer at its request or as soon as it becomes known that the claim:

1. Has equalled or exceeded or has the potential to equal or exceed an amount which is .5% of the insurer's policyholder surplus as of December 31 of the immediately preceding calendar year or exceeds the limit set by the insurer, whichever is less;

2. Involves a coverage dispute;

3. May exceed the managing general agent claims settlement authority;

4. Is open for more than 6 months; or

5. Is closed by payment of an amount equal to or greater than .5% of the insurer's policyholder surplus as of December 31 of the immediately preceding calendar year or an amount set by the insurer, whichever is less.

(9) All claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer the files shall become the sole property of the insurer or its estate. The contract may provide that the managing general agent may have reasonable access to and the right to copy the files on a timely basis.

(10) 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.

(11) The managing general agent will timely transmit to the insurer appropriate data from electronic claims files.

(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 5 years after they are earned on casualty business and not until the profits have been verified as required under s. Ins 42.05.

(13) The managing general agent may not:

(a) 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 the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Appoint any subproducer without assuring that the subproducer is lawfully licensed to transact the type of insurance for which the subproducer is appointed;

(d) 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 1% of the insurer's policyholder surplus as of December 31 of the last completed calendar year;

(e) 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 must be promptly forwarded to the insurer;

(f) Permit its subproducer to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed by the insurer; or

(h) Appoint a submanaging general agent.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

**Ins 42.035 Applicability.** (1) A managing general agent functioning without a written contract on or after August 1, 1993 is deemed to be subject to terms consistent with s. Ins 42.03.

(2) A managing general agent which first enters into, amends or renews a contract on or after August 1, 1993 is subject to s. Ins 42.03.

(3) A managing general agent not otherwise subject to s. Ins 42.03 under sub. (1) or (2) is subject to s. Ins 42.03 after September 30, 1994.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

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**Ins 42.04 Effect of noncompliance on contract terms.** A contract between an insurer and a managing general agent that violates s. Ins 42.03 is enforceable against the managing general agent as if it conformed to s. Ins 42.03.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

**Ins 42.05 Duties of insurers.** (1) Each insurer shall have on file an independent financial examination of each managing general agent with which it has done business after August 1, 1993.

(2) 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. This is in addition to any required loss reserve certification required under s. Ins 50.30.

(3) An insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of its managing general agents.

(4) An insurer shall require that binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who is not associated with the managing general agent except the commissioner may give a written waiver of this subsection if the managing general agent is a wholly owned subsidiary of the insurer.

(5) Within 30 days of entering into or termination of a contract with a managing general agent, an insurer shall provide written notification of the appointment or termination to the commissioner. 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, a copy of the contract, and any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter of the calendar year 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 commissioner of the determination and the insurer and producer shall fully comply with this chapter within 30 days.

(7) An insurer shall not appoint to its board of directors an officer, director, employe, subproducer or controlling shareholder of its managing general agents except the commissioner may give a written waiver of this subsection if the managing general agent is a wholly owned subsidiary of the insurer.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

**Ins 42.06 Examination authority.** The acts of a managing general agent are acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

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**Ins 42.07 Additional restrictions.** This chapter is in addition to ss. 611.67 and 618.22, Stats.

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