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INSTRUCTIONS FOR APPOINTING/TERMINATING MANAGING GENERAL AGENTS (MGAS)

Each MGA must, as a prerequisite to appointment as a MGA, already hold a producer license in this state. The following items must accompany each MGA appointment submission:

1. A completed appointment form SAI 33;
2. A copy of the contract in force between the insurer and the managing general agent. Each contract must include a cover sheet listing each required and prohibited contract provision and identifying page number and paragraph in the contract which demonstrates compliance with Section 33-2-1602, MCA;
3. A copy of the declaration page of a fidelity bond for the protection of the insurer equal to or greater than \$50,000; and
4. A copy of the declaration page of an errors and omissions policy with limits set at no less than \$100,000.

Please note that when appointment form SAI 33 or termination form SAI 41 is submitted to this office, they must be executed by an officer of the company.

Additionally, it is important to note that SAI 41 has been expanded pursuant to Montana Code Annotated, Section 33-17-237, to require that whenever unlawful activity is suspected by an insurer, whether it leads to termination, other sanctions, or no action by the company, said activity must be reported to the Montana Insurance Department. Reports of suspected unlawful activity should be directed to the Chief of the Insurance Investigations Bureau. Questions in this regard may be directed to either the Investigations Bureau or to a staff attorney for the Insurance Department.

Acknowledgment of the appointment will be forwarded to the MGA and the appointing insurer upon conclusion of a favorable review of the submission. It is the insurer's responsibility to notify the MGAs of any terminations of appointments.

All insurers and MGAs subject to the requirements of Title 33, Chapter 2, Part 16, MCA, should carefully review the law and become familiar with all of its requirements. The Department may develop a supplement to future annual statement filings to monitor compliance with the NAIC model MGA act. The Department may also test insurer compliance with this law through the conduct of financial and/or market conduct examinations.

MGA DEFINITION AND CODE

33-2-1501. Definitions. As used in parts 15 through 17 of this chapter, the following definitions apply:

- (10) (a) "Managing general agent" means a person who:
- (i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;
 - (ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and
 - (iii) engages in one or more of the following activities on the business produced:
 - (A) adjustment or payment of claims in excess of an amount determined by the commissioner; or
 - (B) negotiation of reinsurance on behalf of the insurer.
- (b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:
- (i) an employee of the insurer;
 - (ii) a manager of the United States branch of an alien insurer;
 - (iii) 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, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or
 - (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

Part 16 Regulation of Managing General Agents

33-2-1601. Licensure of managing general agent. (1) A person, firm, association, or corporation may not 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 the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not 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 the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this part.

(3) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(4) The commissioner may require the managing general agent to maintain a policy on errors and omissions.

History: En. Sec. 14, Ch. 596, L. 1993.

33-2-1602. Managing general agent – required contract provisions. A person acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party. Whenever both parties share responsibility for a particular function, the written contract must specify the division of responsibilities. The contract must provide at least the following:

(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 shall render accounts to the insurer, detailing all transactions, and shall 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 must be held by the managing general agent in a fiduciary capacity in a bank that is a member of the federal reserve system. This account must be used for all payments on behalf of the insurer. The managing general agent may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent must be maintained. The insurer has access to and may copy all accounts and records that are related to its business, in a form usable by the insurer. The commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. The records must be retained pursuant to 33-3-401.

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

(6) The contract must contain appropriate underwriting guidelines, including:

- (a) the maximum annual premium volume;
- (b) the basis of the rates to be charged;
- (c) the types of risks that may be written;
- (d) maximum limits of liability;
- (e) any applicable exclusions;
- (f) the territorial limitations;
- (g) policy cancellation provisions; and
- (h) the maximum policy period.

- (7) The insurer may cancel or decline to renew any policy of insurance, as provided by law.
- (8) If the contract permits the managing general agent to settle claims on behalf of the insurer:
- (a) all claims must be reported to the company in a timely manner;
 - (b) a copy of the claims file must 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 commissioner or actually exceeds the limit set by the company, 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 6 months; or
 - (v) is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less;
 - (c) all claims files are the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent has reasonable access to and may copy the files on a timely basis.
 - (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.
- (9) When electronic claims files are in existence, the contract must address the timely transmission of the data.
- (10) 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, whether by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the managing general agent until:
- (a) 1 year after they are earned for property insurance business;
 - (b) 5 years after they are earned on casualty business; and
 - (c) the profits have been verified.
- (11) 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 reinsurance assumed and ceded:
 - (i) a list of reinsurers with which automatic agreements are in effect;
 - (ii) the coverages and amounts or percentages that may be reinsured; and
 - (iii) commission schedules;
 - (b) commit the insurer to participate in insurance or reinsurance syndicates;
 - (c) appoint any producer without ensuring that the producer is lawfully licensed to transact the type of insurance for which the producer 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 may not exceed 1% of the insurer's policyholder's 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 the 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 with the insurer; or
 - (h) appoint a submanaging general agent.

History: En. Sec. 15, Ch. 596, L 1993.

- 33-2-1603. Duties of insurers.** (1) The insurer must have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.
- (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 other required loss reserve certification.
- (3) At least semiannually, the insurer shall conduct an onsite review of the underwriting and claims processing operations of the managing general agent.
- (4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer who is not affiliated with the managing general agent.
- (5) Within 30 days of entering into or termination of a contract with a managing general agent, the insurer shall provide the commissioner with written notification of the appointment or termination. Notices of appointment of a managing general agent must include a statement of duties that 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 commissioner may request.

(6) An insurer shall review its books and records each quarter 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 the producer shall comply with this part within 30 days.

(7) An insurer may not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of its managing general agent. This subsection does not apply to relationships governed by Title 33, chapter 2, part 11, or 33-2-1509 through 33-2-1514.

History: En. Sec. 16, Ch. 596, L. 1993.

33-2-1604. 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 as if it were the insurer.

History: En. Sec. 17, Ch. 596, L. 1993.

33-2-1605. Penalties and liabilities. (1) If, after a hearing conducted in accordance with Title 33, chapter 1, part 7, the commissioner finds that a person has violated any provision of this part, the commissioner may order:

- (a) a penalty in an amount of \$5,000 for each separate violation;
- (b) revocation or suspension of the producer's license; and
- (c) the managing general agent to reimburse the insurer, the rehabilitator, or a liquidator of the insurer for any losses incurred by the insurer caused by a violation of this part committed by the managing general agent.

(2) An order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to 33-1-711.

(3) This section does not limit the power of the commissioner to impose any other penalty provided in this title.

(4) This part does not limit the rights of policyholders, claimants, or creditors.

History: En. Sec. 18, Ch. 596, L. 1993; amd. Sec. 33, Ch. 379, L. 1995.