

Information Sheet on Surplus Lines Insurers and Agents

OFFICE OF THE COMMISSIONER OF INSURANCE

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What is surplus lines insurance?

Surplus lines insurance is insurance placed with unauthorized insurers through surplus lines agents or brokers. A surplus lines agent or broker is one licensed to place insurance under s. 628.04 (2), Wis. Stat.

What is an unauthorized insurer?

An unauthorized insurer is one that does *not* hold a valid certificate of authority to do an insurance business in this state.

What regulations are unauthorized insurers subject to?

The placement of insurance with an unauthorized insurer is subject to ss. 618.39, 618.41, 618.43, Wis. Stat., and s. Ins 6.17, Wis. Adm. Code. Risks insured by unauthorized insurers must be placed and serviced by surplus lines agents or brokers.

No person may do an insurance business in this state if the person knows or should know that the result is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer. Any person violating these conditions is personally liable to any claimant under the policy for any damage proximately caused by the person's violation. That damage may include damage resulting from the necessity of placing the insurance with an authorized insurer or the failure of the unauthorized insurer to perform the insurance contract.

What risks may be placed with unauthorized insurers?

All risks, except title insurance, mortgagee guaranty insurance, and worker's compensation insurance risks, may be placed with unauthorized insurers. This applies to policies giving first dollar coverage, policies with small or very large deductibles, and policies in the form of stop-loss or catastrophe coverage for self-insured risks.

May surplus lines agents place risks with any unauthorized insurer?

No agent or broker shall, either knowingly or without adequate investigation of the financial condition and general reputation of the insurer, place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise substandard insurers, without giving the applicant notice in writing of the deficiencies of the insurer. To be financially sound, an insurer must be able to satisfy standards comparable to those applied under the laws of this state to authorized insurers.

Acceptable alien insurers are those companies listed on the quarterly listing of the National Association of Insurance Commissioners Non-Admitted Insurers Information Office, 2301 McGee St., Ste. 800, Kansas City, MO 64108-2660, (816) 842-3600.

What procedures does a surplus lines agent have to follow?

Every licensed surplus lines agent who procures surplus lines insurance shall forward promptly to the policyholder a completed copy of a surplus lines insurance proposal.

Every new or renewal insurance policy procured and delivered under surplus lines regulations shall bear the name and address of the insurance agent or broker who procured it and, except for ocean marine insurance, shall have stamped or affixed upon it the following:

“This insurance contract is with an insurer which has not obtained a certificate of authority to transact a regular insurance business in the state of Wisconsin, and is issued and delivered as a surplus lines coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43 (1), Wisconsin Statutes, requires payment by the policyholder of 3% tax on gross premium.”

Every ocean marine policy shall also have this statement except that the tax is 1/2 of 1% on gross premiums. The policy shall include a description of the subject of insurance, and indicate the coverage, conditions, and term of insurance, the premium charged, the premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. Upon placing a new or renewal coverage under this section, the agent or broker shall promptly deliver to the policyholder or his or her agent evidence of the insurance consisting either of the policy as issued by the insurer or, if the policy is not then available, a certificate, cover note, or other confirmation of insurance.

Are surplus lines agents permitted to advertise?

All surplus lines agents may advertise availability of their services in procuring, on behalf of persons seeking insurance, contracts with insurers not holding a certificate of authority in Wisconsin, but such advertisements shall not refer to any particular unauthorized insurer or insurers.

What records does a surplus lines agent have to keep?

The surplus lines agent must maintain a record of each surplus lines insurance contract, evidenced by a copy of a daily report and other documents detailed in s. Ins 6.17, Wis. Adm. Code. Records required to be maintained by the surplus lines agent shall be open at all times to examination by the Commissioner without notice and shall be kept available and open to the Commissioner for five years.

Is surplus lines business subject to Wisconsin tax?

Insurance business transacted under the surplus lines regulations are subject to a premium tax of 3% of gross premiums if it is other than ocean marine insurance and 1/2 of 1% if it is ocean marine insurance. All premium taxes collected by the surplus lines agent shall be reported and forwarded to the Commissioner on or before March 1 for all insurance procured, renewed, or continued during the preceding calendar year with unauthorized insurers. All premium taxes collected by the surplus lines agent are the property of the state of Wisconsin. With regard to premium taxes on surplus lines business, there are no tax exemptions for any policyholder or risk, except for Indian Tribes per the Attorney General's office.

For information on how to file insurance complaints call:

Telephone Message System
(608) 266-0103 (In Madison)
or
1-800-236-8517 (Statewide)

For your convenience, a complaint form is included in OCI's Web site at http://oci.wi.gov/com_form.htm.

Office of the Commissioner of Insurance

125 South Webster Street
P.O. Box 7873
Madison, Wisconsin 53707-7873
(608) 266-3585
E-mail: ocicomplaints@wisconsin.gov

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