

State of Delaware



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Department of Insurance SURPLUS LINES BULLETIN NO. 4

PLACING SURPLUS LINES INSURANCE; DUTY OF INQUIRY BY SURPLUS LINES BROKER

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Amended April 15, 1992

Recently there have been questions regarding surplus lines insurance and several instances of agents or brokers placing such insurance when they are not licensed to do so.

Prior to placing surplus lines insurance or otherwise acting as a surplus line broker, it will be the responsibility of each individual so acting to pass the surplus lines broker's examination and acquire a valid Delaware Surplus Lines Broker's License.

Chapter 19 of the Delaware Code, Title 18, deals exclusively with surplus lines insurance. It provides standards for the public policy favoring insurability even at an excess premium rate. Surplus lines brokers are provided with guidelines for the proper conduct of business. So that the public may be afforded sufficient protection, the Insurance Commissioner is vested with discretionary authority to determine which insurers, both foreign and alien, are financially strong and stable enough to offer surplus lines coverage through insurance brokers in the State of Delaware.

A foreign insurer is an insurer organized and authorized under the laws of another state, District of Columbia, or any United States territory or possession.

An alien insurer is an insurer organized and authorized under the laws of any country other than the United States or state therein, District of Columbia or any United States territory or possession.

From time to time the Commissioner shall publish a list of all surplus lines insurers deemed by him to be eligible currently and shall mail a copy thereof to each broker at his office. Surplus lines brokers and other interested persons may petition the Commissioner to add coverage to this list. Such petitions must be in writing and show good cause why such coverages should be included on the list. The suitability of certain alien authorized insurers shall be prima facie established by designation on the Non-Admitted Alien Insurers Quarterly Listing published by the National Association of Insurance Commissioners, Non-Admitted Insurers Information Office.

Licensed insurers or licensed agents or brokers or other interested persons may petition the Commissioner to remove coverages from this list. Such petitions must be in writing and must show that there is a market for such coverages in authorized insurers.

No list approving or disapproving authorized insurers for surplus lines shall be promulgated. It is not required that the Commissioner determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the Commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices and that the Commissioner has no credible evidence to the contrary. While any such list is in effect, the broker shall restrict to the insurers all surplus lines business placed by him.

Duty of inquiry by surplus lines broker:

(1) Before placing insurance with an unauthorized insurer, all surplus lines brokers shall make a thorough inquiry into the financial condition and operating history of such insurer in order that the interests of the citizens of Delaware may be protected.

(2) During the course of placing business with an unauthorized insurer, either foreign or alien, each surplus lines broker shall be under a continuous duty to apprise himself that such insurer maintains a

condition of solvency and general financial health, and that the company processes claims and pays losses expeditiously.

(3) Whenever any reasonable doubt arises as to the capacity, competence, stability or good faith of an authorized insurer with whom a surplus lines broker places insurance on behalf of the public of Delaware, the broker is under a further duty to inform the insurance Commissioner of the basis of such doubt. Any broker in a position of doubt shall immediately cease and desist placing further business with such insurer.

Certain other forms are available from this Department relating to the application for Surplus Lines Broker's License, Surplus Lines Broker's Affidavit, Notice of Insurance Effected, Monthly Report to the Insurance Department and Tax Forms.