

## **IC 27-1-33**

### **Chapter 33. Managing General Agents**

#### **IC 27-1-33-1**

##### **Actuary**

Sec. 1. As used in this chapter, "actuary" means a person who is a member in good standing of the American Academy of Actuaries.

As added by P.L.1-1992, SEC.148.

#### **IC 27-1-33-2**

##### **Commissioner**

Sec. 2. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

As added by P.L.1-1992, SEC.148.

#### **IC 27-1-33-3**

##### **Insurer**

Sec. 3. As used in this chapter, "insurer" means any person, firm, association, or corporation duly authorized to act in Indiana as an insurance company pursuant to IC 27-1.

As added by P.L.1-1992, SEC.148.

#### **IC 27-1-33-4**

##### **Managing general agent**

Sec. 4. (a) As used in this chapter, "managing general agent" or "MGA" means any person, firm, association, or corporation:

(1) that manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office);

(2) that acts as an agent for the insurer, whether known as a managing general agent, manager, or other similar term;

(3) that, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium at least five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year; and

(4) that does at least one (1) of the following activities related to the business produced:

(A) Adjusts or pays claims in excess of an amount determined by the commissioner.

(B) Negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding subsection (a), the following persons are not MGAs for the purposes of this chapter:

(1) An employee of the insurer.

(2) A United States manager of the United States branch of an alien insurer.

(3) An underwriting manager that, pursuant to contract:

(A) manages all or part of the insurance operations of the insurer;

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(B) is under common control with the insurer, subject to IC 27-1-23; and

(C) is not compensated based on the volume of premiums written.

(4) An attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer as authorized in IC 27-6-6-1 or an interinsurance exchange as authorized in IC 27-1-2-2 under powers of attorney.

As added by P.L.1-1992, SEC.148. Amended by P.L.130-1994, SEC.34; P.L.116-1994, SEC.44.

IC 27-1-33-5

Underwrite

Sec. 5. As used in this chapter, "underwrite" means the authority to accept or reject risk on behalf of the insurer.

As added by P.L.1-1992, SEC.148.

IC 27-1-33-6

Acting in capacity of MGA with respect to risks; prohibitions; bond; errors and omissions policy

Sec. 6. (a) A person, a firm, an association, or a corporation may not act in the capacity of an MGA with respect to risks located in Indiana for an insurer licensed in Indiana unless that person is a licensed producer in Indiana.

(b) A person, a firm, an association, or a corporation may not act in the capacity of an MGA representing an insurer domiciled in Indiana with respect to risks located outside Indiana unless that person is licensed as a producer in Indiana pursuant to the provisions of this chapter. For the purposes of this subsection, a person is licensed as a producer in Indiana if that person holds a nonresident license.

(c) The commissioner may require a bond in an amount determined by the commissioner for the protection of the insurer.

(d) The commissioner may require an MGA to maintain an errors and omissions policy.

As added by P.L.1-1992, SEC.148.

IC 27-1-33-7

Placement of business with an insurer; contract; contents

Sec. 7. A person, a firm, an association, or a corporation acting in the capacity of an MGA may not place business with an insurer unless there is in force a written contract between the parties. A contract required by this section must set forth the responsibilities of each party and, where both parties share responsibility for a particular function, specify the division of those responsibilities. The contract must, at a minimum, contain provisions that state the following:

(1) The insurer may terminate the contract for cause upon written notice to the MGA and may suspend the underwriting authority of the MGA during the pendency of any dispute

regarding the cause for termination.

(2) The MGA will:

(A) render accounts to the reinsurer detailing all transactions; and

(B) 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 MGA in a fiduciary capacity in a bank that is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The MGA may retain not more than three (3) months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the MGA shall 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 commissioner shall have access to all books, bank accounts, and records of the MGA in a form usable to the commissioner.

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

(6) Appropriate underwriting guidelines, including the following:

(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.

(H) The maximum policy period.

(7) The insurer has the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

(8) If the contract permits the MGA to settle claims on behalf of the insurer, the following apply:

(A) All claims must be reported to the company 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 commissioner or exceeds the limit set by the company, whichever is less;

(ii) involves a coverage dispute;

(iii) may exceed the MGA's claims settlement authority;

(iv) is open for more than six (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 claim files will be the joint property of the insurer

and MGA. However, upon an order of liquidation of the insurer, those files shall become the sole property of the insurer or its estate. The MGA shall have reasonable access to and the right to copy the files on a timely basis.

(D) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA 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) Where electronic claims files are in existence, the contract must address the timely transmission of the data in those files.

(10) If the contract provides for a sharing of interim profits by the MGA, and the MGA 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 MGA:

(A) until one (1) year after the profits are earned, for property insurance business, and five (5) years after the profits are earned on casualty business; and

(B) until the profits have been verified pursuant to section 8 of this chapter.

(11) An MGA may not do any of the following:

(A) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA 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 producer without assuring 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 one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year before the payment or commitment.

(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 with the insurer, unless the MGA and the insurer are affiliated in an insurance holding company system.

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(H) Appoint a sub-MGA.

As added by P.L.1-1992, SEC.148. Amended by P.L.186-1997, SEC.9.

IC 27-1-33-8

Independent financial examination; loss reserves; on-site review of underwriting and claims; reinsurance; termination of contracts; review of books and records; board of directors

Sec. 8. (a) An insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each MGA with which it has done business.

(b) If an MGA 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 MGA. This requirement is in addition to any other required loss reserve certification.

(c) The insurer shall periodically (at least semiannually) conduct an on-site review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the MGA.

(e) Within thirty (30) days after entering into or terminating a contract with an MGA, the insurer shall provide written notification of the appointment or termination to the commissioner. Notices of appointment of an MGA 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.

(f) An insurer shall review its books and records each quarter to determine if any producer (as defined by section 4 of this chapter) has become, by operation of section 4 of this chapter, an MGA. If the insurer determines that a producer has become an MGA pursuant to section 4 of this chapter, the insurer shall promptly notify the producer and the commissioner of that determination, and the insurer and producer shall fully comply with the provisions of this chapter within thirty (30) days.

(g) An insurer shall not appoint to its board of directors an officer, a director, an employee, a subproducer, or a controlling shareholder of its MGAs. This subsection does not apply to relationships governed by IC 27-1-23.

(h) An insurance holding company system regulated under IC 27-1-23 may perform the obligations imposed by this section for insurers affiliated in the system by submitting, in a form acceptable to the commissioner, consolidated information concerning the MGAs with whom the insurers have done business.

As added by P.L.1-1992, SEC.148. Amended by P.L.116-1994, SEC.45.

IC 27-1-33-9

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Actions of MGA; examinations

Sec. 9. The acts of the MGA are considered to be the acts of the insurer on whose behalf the MGA is acting. An MGA may be examined as if it were the insurer.

As added by P.L.1-1992, SEC.148.

IC 27-1-33-10

Violations; penalties; civil actions

Sec. 10. (a) If the commissioner determines that the MGA or any other person has not materially complied with this chapter or any rule or order adopted under this chapter, after notice and opportunity to be heard:

(1) the commissioner may order:

(A) for each separate violation, a civil penalty in an amount not exceeding five thousand dollars (\$5,000); and

(B) the revocation or suspension of the producer's license; and

(2) if it is found that because of such material noncompliance the insurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered under IC 27-9 and the receiver appointed under that order determines that the MGA or any other person has not materially complied with this chapter or any rule or order adopted under this chapter and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for by law.

(d) Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

As added by P.L.1-1992, SEC.148. Amended by P.L.130-1994, SEC.35; P.L.116-1994, SEC.46.

IC 27-1-33-11

Rules for implementation and administration of chapter

Sec. 11. The commissioner may adopt reasonable rules under IC 4-22-2 for the implementation and administration of this chapter.

As added by P.L.1-1992, SEC.148.

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