

MANAGING GENERAL AGENTS ACT

Table of Contents

Section 1.	Purpose and Scope
Section 2.	Definitions
Section 3.	Licensure
Section 4.	Required Contract Provisions
Section 5.	Duties of Insurers
Section 6.	Examination Authority
Section 7.	Penalties and Liabilities
Section 8.	Rules and Regulations
Section 9.	Effective Date

Section 1. Purpose and Scope

This Act may be cited as the Managing General Agents Act. This chapter governs the qualifications and procedures for resident and non-resident producers acquiring the status as a Managing General Agent.

Section 2. Definitions

As used in this Act:

- A. “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.
- B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- C. “Insurer” means any person duly licensed in this state as an insurance company pursuant to [insert applicable licensing statute].
- D. “Managing general agent” (MGA) means any person who:
 - (1) Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office); and
 - (2) Acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with the following activity related to the business produced adjusts or pays claims in excess of \$10,000 per claim or negotiates reinsurance on behalf of the insurer.

Drafting Note: Individuals or agents calling themselves “managing general agents” may not necessarily fall under the provisions of this Act. In other words, if the individual or agent does not perform the activities set forth in Paragraphs (1) and (2) then, for purposes of the Act, the individual is not an MGA.

Drafting Note: Insert the proper title for the chief insurance regulatory official wherever the term “Commissioner” appears.

- (3) Notwithstanding the above, the following persons shall not be considered MGAs for the purposes of this Act:
 - (a) An employee of the insurer;
 - (b) A U.S. Manager of the United States branch of an alien insurer;
 - (c) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written;
 - (d) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

Drafting Note: A managing general agent does not fall within the definition of an “adjuster,” or one “who negotiates reinsurance on behalf of the insurer” as stated in Paragraph (2).

- E. “Person” means an individual or a business entity.
- F. “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

Drafting Note: If the enacting state has a third party administration (TPA) Act, it should be reviewed to eliminate any conflict.

Section 3. Licensure

- A. No person shall act in the capacity of an MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed producer in this state.
- B. No person shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as a producer in this state (such license may be a nonresident license) pursuant to the provisions of this Act.

Section 4. Required Contract Provisions

No person acting in the capacity of an MGA shall place business with an insurer unless there is in force 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 such responsibilities, and which contains the following minimum provisions:

- A. The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

Drafting Note: Nothing in the above subsection is intended to relieve the MGA or insurer of any other contractual obligation.

- B. The MGA 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.

- C. All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in an institution that is insured by the FDIC. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three months estimated claims payments and allocated loss adjustment expenses.
- D. Separate records of business written by the MGA will 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. Such records shall be retained according to [cite appropriate record retention statute].
- E. The contract may not be assigned in whole or part by the MGA.
- F.
 - (1) Appropriate underwriting guidelines including:
 - (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.
 - (2) The insurer shall have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations [concerning the cancellation and non-renewal of insurance policies].
- G. The insurer shall require the MGA to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be at least \$100,000 or ten percent (10%) of the managing general agent's total annual written premium nationwide produced by the MGA for the insurer in the prior calendar year, but in no event greater than \$500,000.

Drafting Note: It is contemplated that one bond per company represented would be required.

- H. The insurer may require the MGA to maintain an errors and omissions policy.
- I. If the contract permits the MGA to settle claims on behalf of the insurer:
 - (1) All claims must be reported to the company in a timely manner.
 - (2) 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:

- (a) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company; whichever is less;
 - (b) Involves a coverage dispute;
 - (c) May exceed the MGA's claims settlement authority;
 - (d) Is open for more than six months; or
 - (e) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.
- (3) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer such 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.
- (4) 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.

Drafting Note: Nothing in the above subsection is intended to relieve the MGA or insurer of any other contractual obligation.

- J. Where electronic claims files are in existence, the contract must address the timely transmission of the data.
- K. The MGA may use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use.
- L. 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 until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to Section 5 of this Act.
- M. The MGA shall not:
 - (1) 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 such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;
 - (2) Commit the insurer to participate in insurance or reinsurance syndicates;
 - (3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;

- (4) 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 one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
- (5) 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;
- (6) Except as provided in Section 5G, permit its subproducer to serve on the insurer's board of directors;
- (7) Jointly employ an individual who is employed with the insurer; or
- (8) Appoint a sub-MGA.

Section 5. Duties of Insurers

- A. The insurer shall have on file an independent audited annual financial statement or reports for the two (2) most recent fiscal years that prove that the MGA has a positive net worth. If the MGA has been in existence for less than two fiscal years, the MGA shall include financial statements or reports, certified by an officer of the MGA and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis must include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included.

Drafting Note: If the MGA has been in existence for less than two (2) fiscal years or has not qualified as an MGA for that period and otherwise does not have the required audited financial statements or reports, the MGA shall include financial statements or reports, certified by an officer of the MGA and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which financial statements or reports have been completed.

- 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 is in addition to any other required loss reserve certification.
- C. The insurer shall periodically (at least semi-annually) 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 shall not be affiliated with the MGA.
- E. Within thirty (30) days of entering into or terminating a contract with an MGA, the insurer shall provide written notification to the commissioner. Notices entering into a contract with an MGA 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, 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 2D has become, by operation of Section 2D, a MGA as defined in that section. If the insurer determines that a producer has become a MGA pursuant to the above, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer must fully comply with the provisions of this Act within thirty (30) days.
- G. An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its MGAs. This subsection shall not apply to relationships governed by the Insurance Holding Company Systems Regulatory Act or, if applicable, the Business Transacted with Producer Controlled Property/Casualty Insurer Act.
- H. The insurer shall keep the bond required by Section 4G on file for review by any applicable commissioner.

Section 6. Examination Authority

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

Section 7. Penalties and Liabilities

- A. If the commissioner determines that the MGA or any other person has not materially complied with this Act, or any regulation or Order promulgated thereunder, after notice and opportunity to be heard, the Commissioner may order:
 - (1) For each separate violation, a penalty in an amount not exceeding [insert amount];
 - (2) Revocation or suspension of the producer's license; and
 - (3) If it was found that because of such material non-compliance that 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 pursuant to [insert state's rehabilitation or liquidation statute], and the receiver appointed under that order determines that the MGA or any other person has not materially complied with this Act, or any regulation or order promulgated thereunder, 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.

Drafting Note: If state law does not otherwise provide, amend the bracketed citation in the preceding paragraph to include the rehabilitation or liquidation statute of any reciprocal state. This is intended to codify the standing of a receiver to maintain a civil action in a reciprocal state.

- C. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.
- D. Nothing contained in this Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and creditors.

Section 8. Rules and Regulations

The Commissioner of Insurance may adopt reasonable rules and regulations for the implementation and administration of the provisions of this Act.

Section 9. Effective Date

This Act shall take effect on [insert date]. No insurer may continue to utilize the services of an MGA on and after [insert date] unless such utilization is in compliance with this Act.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1990 Proc. I 12-14, 851, 853-856 (adopted at special plenary session in September 1989).

1990 Proc. I 6, 30, 838-839, 841-844 (amended at winter plenary and reprinted).

1991 Proc. I 9, 18, 907, 909 (amended).

1993 Proc. I 1128-1129, 1131, 1138-1142 (amended, reprinted and adopted by parent committee).

1993 Proc. 2nd Quarter 12, 102 (adopted by executive and plenary).

2002 Proc. 3rd Quarter 11, 888, 890-894 (amended and reprinted).