

## MANAGING GENERAL AGENTS ACT

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### Section 1. Purpose and Scope

- 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 policyholders surplus as reported in the last annual statement of the insurer in any one quarter of the year together with the following activity related to the business produced adjacent to the insurer: 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.

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- (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

- C. All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in

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- (a) Has the potential to exceed an amount determined by the commissioner or

- (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

- 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 sw -6..d[(f)-1 (o)-3.( a47 Td()TJEMC /P AMCID 22 3D)-3.3 (1(e)8ti

**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.

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

*1990 Proc. I 12-14, 851, 853-*