

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF INSURANCE

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Managing General Agent License Information

Thank you for contacting our office regarding the license applications for Managing General Agent.

The licensing guide is enclosed. We have also enclosed copies of South Dakota statutes applicable to contracts between the Insurer and the MGA.

A Managing General Agent License, either resident or non-resident, application can be accessed through Sircon (Vertafore) at <https://www.sircon.com/resource/layout.jsp?page=southdakotaLps&type=southdakota>.

Sincerely,

Agent Licensing
SD Division of Insurance

SOUTH DAKOTA MANAGING GENERAL AGENT LICENSING INFORMATION

All Managing General Agents operating in the State of South Dakota are required to be licensed effective July 1, 1992. For the purpose of this licensing requirement, the following producers or firms would be defined as a Managing General Agent:

Any person who manages all or part of the insurance business of an insurer including the management of a separate division, department or underwriting office, and acts as producer for the insurer and either (1) adjusts or pays claims OR (2) negotiates reinsurance on behalf of the insurer.

OR

Any person who manages all or part of the insurance business of an insurer including the management of a separate division, department or underwriting office, and who, with or without the authority, either separately, or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross premium of five percent (5%) or more of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year and either (1) adjusts or pays claims or (2) negotiates reinsurance on behalf of the insurer.

No person may act in the capacity of a Managing General Agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state and appointed by that insurer.

Also note, no person may act in the capacity of a Managing General Agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a producer in this state. The license may be a Non-resident Producer License.

No Managing General Agent May 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 specifies the division of common or shared responsibilities. The contract shall contain the minimum provisions set forth in SDCL 58-30-127 through 58-30-131.

THE CONTRACT BETWEEN THE INSURER AND THE MANAGING GENERAL AGENT MAY BE FILED WITH AND APPROVED BY THE DIRECTOR UPON REQUEST OF THE DIRECTOR.

LICENSING REQUIREMENTS

- a. Managing General Agent license application
- b. License fee - \$25.00 for resident; \$30.00 for non-resident
- c. Must be currently licensed as a South Dakota resident or non-resident producer.

LICENSE AND APPOINTMENT APPLICATIONS

Applications may be accessed from the Division's website in the "Producer Applications, Forms, Reports and Related Fees" section at <http://www.dlr.sd.gov/insurance>

MANAGING GENERAL AGENTS CONTRACT REQUIREMENTS

§ 58-30-127. Written contract between managing general agent and insurer.

No managing general agent may 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 specifies the division of common or shared responsibilities. The contract shall contain the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

(2) The managing general agent shall 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;

(3) All funds collected for the account of an insurer shall be held by the managing general agent in an escrow account in a bank which is a qualified United States financial institution as defined in § 58-30-139. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses;

(4) Separate records of business written by the managing general agent 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 director shall have access to all books, bank accounts and records of the managing general agent in a form usable to the director. Records shall be retained for three years or until examined, whichever is later;

(5) The contract may not be assigned in whole or part by the managing general agent;

(6) 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; and

(7) Timely transmission of electronic claims files.

The insurer may cancel or nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

§ 58-30-128. Settling claims - Content of contract.

If the managing general agent may settle claims on behalf of the insurer, the following shall be included in the contract:

(1) All claims shall be reported to the company in a timely manner;

(2) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:

(a) Involves a coverage dispute;

(b) May exceed the managing general agent's claims settlement authority;

(c) Is open for more than six months; or

(d) Is closed by payment of an amount set by the company;

(3) All claim files are the joint property of the insurer and managing general agent. Upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis;

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent 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;

(5) The claims settlement authority and limitations of the managing general agent.

The director may initially and at least annually review the amount for settling claims or payment of claims and direct the amount be changed.

Source: SL 1992, ch 353, § 5.

§ 58-30-129. Sharing interim profits.

If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent may determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned on property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to § 58-30-131.

Source: SL 1992, ch 353, § 6.

§ 58-30-130. Restrictions on managing general agents.

A managing general agent may not:

(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent 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 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 insurance producer without assuring that the insurance producer is lawfully licensed to transact the type of insurance for which the insurance producer 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 may not exceed one percent of the insurer's policyholder's surplus as of December thirty-first 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 shall be promptly forwarded to the insurer;

(6) Permit its subagent to serve on the insurer's board of directors;

(7) Jointly employ an individual who is employed with the insurer; or

(8) Appoint a submanaging general agent.

Source: SL 1992, ch 353, § 7; 2001, ch 286, § 190.

Amendments.

The 2001 amendment, in subdivision (3), substituted "insurance producer" for "agent" in two places; and made a gender-neutral change.

§ 58-30-131. Duties of insurer working with managing general agent.

The insurer has the following duties:

(1) The insurer shall review and have on file an annual independent financial examination done by a person acceptable to the director, of each managing general agent with which it has done business;

(2) If a managing general agent 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 managing general agent. This is in addition to any other required loss reserve certification;

(3) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent;

(4) 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 managing general agent;

(5) Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the director. Notices of appointment of a managing general agent 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 director may request;

(6) An insurer shall review its books and records each quarter to determine if any insurance producer is a managing general agent as defined in § 58-30-124. If the insurer determines that an insurance producer has become a managing general agent, the insurer shall promptly notify the insurance producer and the director within thirty days of the determination. The insurer and an insurance producer shall fully comply with the provisions of §§ 58-30-124 to 58-30-139, inclusive, within thirty days of notification to the director; and

(7) An insurer may not appoint to its board of directors an officer, director, employee, insurance producer, or controlling shareholder of its managing general agents. This subdivision does not apply to relationships governed by chapters 58-5A and 58-44.

Source: SL 1992, ch 353, § 8; 2001, ch 286, § 191.