

40-2,132. Same; written contract to be in force prior to placement of business with insurer, minimum provisions governing relationship. No person, firm, association or corporation 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, specifies the division of responsibilities where both parties have responsibility for a particular function, and 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.

(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 a bank which 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 no more than three months estimated claim 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 until the insurer and business to which they pertain has been the subject of an examination pursuant to the provisions of K.S.A. 40-222 and amendments thereto.

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

(f) Appropriate underwriting guidelines including:

(1) The maximum annual premium volume;

(2) the basis of the rates to be charged;

(3) the types of risks which may be written;

(4) maximum limits of liability;

(5) applicable exclusions;

(6) territorial limitations;

(7) policy cancellation provisions; and

(8) the maximum policy period.

The insurer shall have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations relating to the cancellation and non-renewal of insurance policies.

(g) 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, but 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.

(h) Where electronic claims files are in existence, the contract shall address the timely transmission of the data.

(i) 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 by 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 K.S.A. 40-2,133.

(j) 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 agent or broker without assuring that the agent or broker is lawfully licensed to transact the type of insurance for which such agent or broker 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 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 shall be promptly forwarded to the insurer;

(6) permit its subagent or broker to serve on its board of directors;

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

(8) appoint a sub-MGA.

History: L. 1990, ch. 158, § 4; Jan. 1, 1991.