

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1409 Contract between managing general agent and insurer; required provisions.

Sec. 1409. No person acting in the capacity of a managing general agent shall place business with an insurer unless there is a written contract between the parties that sets forth the responsibilities of each party, and if both parties share responsibility for a particular function, specifies the division of the responsibilities, and that contains the following provisions:

(a) That the insurer may terminate the contract 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.

(b) That the managing general agent shall render accounts to the insurer detailing all transactions and shall remit all funds due to the insurer on not less than a monthly basis.

(c) That funds collected for the account of the insurer shall be held by the managing general agent in a fiduciary capacity in a federally insured financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses.

(d) That separate records of business written by the managing general agent shall be maintained by the managing general agent for the period between each examination of the insurer and until 1 year after each examination of the insurer by the commissioner or licensing authority. The insurer shall have access to and the right to copy all books, accounts, and records related to its business in a form usable by the insurer and the commissioner shall have access to and the right to copy all books, accounts, and records of the managing general agent in a form usable to the commissioner.

(e) That the contract shall not be assigned in whole or in part by the managing general agent.

(f) That the managing general agent is subject to appropriate underwriting guidelines that include, but are not limited to, the following:

(i) The maximum annual premium volume.

(ii) The basis of the rates to be charged.

(iii) The types of risks that may be written.

(iv) Maximum limits of liability.

(v) Applicable exclusions.

(vi) Territorial limitations.

(vii) Policy cancellation provisions.

(viii) The maximum policy period.

(g) If the contract permits the managing general agent to settle claims on behalf of the insurer, all of the following apply:

(i) All claims must be reported to the insurer in a timely manner.

(ii) 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 meets any of the following:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(B) Involves a coverage dispute.

(C) May exceed the managing general agent's claims settlement authority.

(D) Is open for more than 6 months.

(E) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(iii) All claims files are the joint property of the insurer and the managing general agent.

(iv) Any settlement authority granted to the managing general agent may be terminated upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend any settlement authority granted to the managing general agent during the pendency of any dispute regarding the cause for termination.

(h) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or in any other manner, that interim profits shall not be paid to the managing general agent until 1 year after they are earned for property insurance business and 5 years after they are earned for casualty insurance business and not until section 1411(a) and (b) has been met.

(i) That the managing general agent shall not do any of the following:

(i) 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 such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(ii) Commit the insurer to participate in insurance or reinsurance syndicates.

(iii) Appoint any agent without assuring that the agent is lawfully licensed to transact the type of insurance for which he or she is appointed.

(iv) Without prior approval of the insurer pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that shall not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year.

(v) 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.

(vi) Permit its agent to serve on the insurer's board of directors.

(vii) Jointly employ an individual who is employed with the insurer.

(viii) Appoint another managing general agent to perform its duties under this chapter.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218