60H.04 REQUIRED CONTRACT PROVISIONS.

No person, firm, association, or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties. The contract must specify the responsibilities of each party and, where both parties share responsibility for a particular function, must specify the division of the responsibilities. The contract must include the following minimum provisions:

(a) 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.

(b) The managing general agent must give 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 must be held by the managing general agent in the name of the insurer in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account must 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. A managing general agent shall deposit only trust funds in a trust account and shall not commingle personal funds or other funds in a trust account, except that a managing general agent may deposit and maintain a sum in a trust account from personal funds, which sum shall be specifically identified and used to pay service charges or satisfy the minimum balance requirements relating to the trust account.

(d) Separate records of business written by the managing general agent must be maintained. The insurer shall have access to and the 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 managing general agent in a form usable to the commissioner. The records shall be retained on a basis acceptable to the commissioner.

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

(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 nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

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

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

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

(i) has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;

(ii) involves a coverage dispute;

(iii) may exceed the managing general agent's claim settlement authority;

(iv) is open for more than six months; or

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

(3) All claim files are the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer the files become the sole property of the insurer or its estate. 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.

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

(i) 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 or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent 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 as provided under section 60H.05.

(j) The managing general agent shall 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 the automatic agreements are in effect, the coverage and amounts or percentages that may be reinsured, and commission schedules;

(2) commit the insurer to participate in insurance or reinsurance syndicates;

(3) appoint an agent without assuring that the agent is lawfully licensed to transact the type of insurance for which that person 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 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) 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.

(k) The contract term may not be for an unreasonable period of time, but in no circumstance may the term exceed five years.

(l) The insurer may not authorize the managing general agent to establish the amount of the loss reserves.

History: *1991 c 325 art 4 s 4*