

304.3-520 Contract between insurer and controlling agent -- Minimum provisions -- Prohibited activities.

A person acting in the capacity of controlling agent shall not 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, where both parties share responsibility for a particular function, specifies the division of these responsibilities, and which contains the following minimum provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the controlling agent. The insurer may suspend the underwriting authority of the controlling agent during the pendency of any dispute regarding the termination;
- (2) The controlling agent shall render account 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 the insurer shall be held by the controlling agent 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 controlling agent may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the controlling agent shall 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 controlling agent in a form usable to the commissioner. These records shall be retained according to KRS 304.2-220 and the commissioner's administrative regulations;
- (5) The contract shall not be assigned in whole or in part by the controlling 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, including a statement that the insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable laws concerning the cancellation and nonrenewal of insurance policies; and
 - (h) The maximum policy period;
- (7) If the contract permits the controlling agent to settle claims on behalf of the insurer:
 - (a) All claims shall be reported to the insurer in a timely manner;
 - (b) 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:
 1. Has the potential to exceed an amount determined by the

commissioner or exceeds the limit set by the insurer, whichever is less;

2. Involves a coverage dispute;
 3. May exceed the controlling agent's claims settlement authority;
 4. Is open for more than six (6) months; or
 5. Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less;
- (c) All claim files shall be the joint property of the insurer and the controlling agent. However, upon an order of liquidation of the insurer the claim files shall become the sole property of the insurer or its estate. The controlling agent shall have reasonable access to and the right to copy the files; and
- (d) Any settlement authority granted to the controlling agent may be terminated for cause upon the insurer's written notice to the controlling 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;
- (8) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;
- (9) If the contract provides for a sharing of interim profits by the controlling agent, and the controlling 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 shall not be paid to the controlling agent until one (1) year after they are earned for property insurance business and five (5) years after they are earned on casualty business, and not until the profits have been verified pursuant to KRS 304.3-530; and
- (10) The controlling agent shall not:
- (a) Bind reinsurance or retrocessions on behalf of the insurer, except that the controlling 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 coverages and amounts or percentages that may be reinsured, and commission schedules;
 - (b) Commit the insurer to participate in insurance or reinsurance syndicates;
 - (c) Appoint any person producing business without assuring that the person is lawfully licensed to transact the type of insurance for which the person is appointed;
 - (d) 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 surplus as of December 31 of the last completed calendar year;
 - (e) Collect any payment for 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;
 - (f) Permit its subproducer to serve on the insurer's board of directors;

- (g) Jointly employ an individual who is employed with the insurer; or
- (h) Appoint a subcontrolling agent.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 983, effective July 15, 2010. --
Created 1992 Ky. Acts ch. 139, sec. 3 effective July 14, 1992.