

## **CHAPTER 26.1-26.3 MANAGING GENERAL AGENTS**

### **26.1-26.3-01. Definitions.**

As used in this chapter:

1. "Actuary" means a person who is a member in good standing of the American academy of actuaries.
2. "Insurer" means any person, firm, association, or corporation duly licensed in this state as an insurance company pursuant to this title.
3. "Managing general agent" means any individual, partnership, corporation, or limited liability company which:
  - a. Manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office.
  - b. Acts as an insurance producer for the insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:
    - (1) Adjusts or pays claims in excess of an amount determined by the commissioner; or
    - (2) Negotiates reinsurance on behalf of the insurer.
  - c. Notwithstanding the above, the following persons will not be considered as managing general agents for the purposes of this chapter:
    - (1) An employee of the insurer.
    - (2) A United States manager of the United States branch of an alien insurer.
    - (3) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to chapter 26.1-10, and whose compensation is not based on the volume of premiums written.
    - (4) The attorney in fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.
4. "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

### **26.1-26.3-02. Licensure.**

1. No individual, partnership, corporation, or limited liability company 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 individual, partnership, corporation, or limited liability company is licensed as an insurance producer in this state.
2. An individual, partnership, corporation, or limited liability company may not 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 individual, partnership, corporation, or limited liability company is licensed as either a resident or nonresident insurance producer in this state pursuant to the provisions of this title.
3. The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.
4. The commissioner may require the managing general agent to maintain an adequate errors and omissions policy.

### **26.1-26.3-03. Required contract provisions.**

No individual, partnership, corporation, or limited liability company acting in the capacity of a 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 when both

parties share responsibility for a particular function, specifies the division of the responsibilities, and which contains 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 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.
3. All funds collected for the account of an insurer will be held by the managing general agent 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.
4. Separate records of business written by the managing general agent 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 managing general agent in a form usable to the commissioner.
5. The contract may not be assigned in whole or in 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.The insurer has the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.
7. If the contract permits the managing general agent to settle claims on behalf of the insurer:
  - a. All claims must be reported to the company in a timely manner.
  - b. 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:
    - (1) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;
    - (2) Involves a coverage dispute;
    - (3) May exceed the managing general agent's claims settlement authority;
    - (4) Is open for more than six months; or
    - (5) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.
  - c. All claims files will be 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.
  - d. 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.
8. If electronic claims files are in existence, the contract must address the timely transmission of the data.
9. 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 pursuant to section 26.1-26.3-04.

10. The managing general agent may not:
  - a. 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.
  - b. Commit the insurer to participate in insurance or reinsurance syndicates.
  - c. Appoint any insurance producer without assuring that the insurance producer is licensed in the appropriate lines of insurance.
  - d. 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.
  - e. 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.
  - f. Permit its subagent to serve on the insurer's board of directors.
  - g. Jointly employ an individual who is employed with the insurer.
  - h. Appoint a submanaging general agent.

**26.1-26.3-04. Duties of insurers.**

1. The insurer shall have on file, in a form acceptable to the commissioner, an independent financial examination 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 periodically and at least semiannually conduct an onsite 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 rests 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 commissioner. Notices of appointment of a managing general agent must 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 commissioner may request.
6. An insurer shall review its books and records each quarter to determine if any of its insurance producers have become, by operation of subsection 3 of section 26.1-26.3-01, a managing general agent as defined in that section. If the insurer determines that an insurance producer has become a managing general agent pursuant to the above, the insurer shall promptly notify the insurance producer and the commissioner of the determination and the insurer and insurance producer shall fully comply with the provisions of this chapter within thirty days.
7. An insurer may not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by chapter 26.1-10.

**26.1-26.3-05. Examination authority.**

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

**26.1-26.3-06. Penalties and liabilities.**

1. If the commissioner determines that the managing general agent or any other person has not materially complied with this chapter or any rule or order adopted under this chapter, after notice and opportunity to be heard, the commissioner may order:
  - a. For each separate violation, a penalty in an amount not exceeding one thousand dollars;
  - b. Revocation or suspension of the insurance producer's license; and
  - c. If it was found that because of the material noncompliance that the insurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.
2. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to chapter 26.1-06.1, and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with this chapter, or any rule or order adopted under this chapter, and the insurer suffered any loss or damage as a result of the material noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.
3. Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance law.
4. Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.
5. The decision, determination, or order of the commissioner pursuant to subsection 1 is subject to judicial review pursuant to chapter 28-32.

**26.1-26.3-07. Rules.**

The insurance commissioner may adopt reasonable rules for the implementation and administration of the provisions of this chapter.