



OKLAHOMA INSURANCE DEPARTMENT

Producer Licensing BULLETIN NO. 2013-10

TO: All Licensed Insurance Producers

RE: Surplus Lines

DATE: September 25, 2013

As an insurance producer, you know that from time to time you run into a situation where the insurance required to protect the interest of your client cannot be procured from admitted insurers. In that case, you may procure the insurance from a surplus lines insurer by accessing the surplus lines market through a properly licensed surplus lines broker. Keep in mind that because the insurer that will be providing coverage is not admitted in Oklahoma, additional responsibility for the transaction is borne by the surplus lines broker, who must comply with all of the conditions and obligations set out in state law, at 36 O.S. §§ 1101 -1120.

It is important to work with an experienced, properly licensed surplus lines broker who understands the obligations and responsibilities required of someone working in the surplus lines market. The following paragraphs discuss some of those obligations.

A licensed surplus lines broker must write the application to the surplus lines carrier, although the surplus lines broker may accept and place surplus lines insurance from any insurance agent or broker licensed in the state to write the kind of insurance involved. The referring producer or broker may be compensated for that business. The insurance producer or broker can be compensated by the surplus lines insurer.

An experienced surplus lines broker will be careful to document his or her files in order to show compliance with 36 O.S. § 1106's requirement to ascertain the availability of coverage in the admitted market (known as a due diligence search) before obtaining that coverage through the surplus lines market. The surplus lines broker is not required to make a due diligence search if: 1) the surplus lines broker is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser (defined in the law); 2) the surplus lines broker has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 3) the exempt commercial purchaser has subsequently requested in writing for the surplus lines broker to procure or place such insurance from a nonadmitted insurer.

The surplus lines broker should also document the financial condition of the insurers that he or she works with. A surplus lines broker may not knowingly place any such coverage with a nonadmitted insurer which is in an unsound financial condition. To be considered financially sound, a surplus lines insurer must meet the requirements set out in state law. A violation of this requirement is punishable by revocation of the surplus lines broker's license and criminal penalties.

The surplus lines broker's responsibilities don't end with the determination that coverage may be placed in the surplus market. The surplus lines broker must then ensure that the policy form contains a disclosure, in bold face type on the declarations page that the contracts are not subject to the protection of any guaranty association in the event of liquidation or receivership of the surplus lines insurer. Although some surplus lines insurers may contain this disclosure in some place in the policy form, it is the surplus lines broker's responsibility to review the form and make sure that the required disclosure is provided on the policy declaration page.

The surplus lines broker also has the responsibility of reporting the transaction and paying the appropriate premium tax to the Oklahoma Insurance Department. For example, when Oklahoma is the home state of the insured, the surplus lines broker must make all informational filings and fee payments as discussed in the following paragraph. Failure to file the required information or to make the required fee and/or premium tax payments will result in disciplinary action.

Each surplus lines broker shall, on or before April 1 of each year, file with the Insurance Commissioner a verified statement of all surplus lines insurance transacted by the broker during the preceding calendar year where Oklahoma is the home state of the insured. The statement shall be on a form prescribed and furnished by the Insurance Commissioner and shall show such information required to be submitted as established by the Insurance Commissioner.

Where Oklahoma is the home state of the insured, a surplus lines broker shall collect and pay premium tax, based on the total gross premiums charged in connection with the broker-procured surplus lines insurance, less any return premiums. Generally, the premium tax is equal to six percent (6%) of the total gross premiums whether the properties, risks or exposures are located or to be performed inside or outside Oklahoma. The surplus lines broker must consult the statutes in order to determine the appropriate tax in specific situations.

Be aware that the Insurance Department has the ability to find this information from the insured, even if the tax is not properly reported by the surplus lines broker. State law provides that upon request of the Insurance Commissioner, any person in Oklahoma who is the insured under a policy issued by a surplus lines insurer upon a subject of insurance resident, located, or to be performed in Oklahoma at the time the policy was issued, or where the insured's home state is Oklahoma, shall produce for examination all policies and other documents evidencing and relating to the insurance, and shall disclose the amount of the gross premiums paid or agreed to be paid for the insurance, through whom the insurance was procured, and such other information relative to the

placing of the insurance as may reasonably be required by the Insurance Commissioner.

Finally, a surplus lines broker has a statutory responsibility to keep a full and true record of each surplus lines contract procured by the surplus lines broker, and such record may be examined at any time within three years thereafter by the Insurance Commissioner.

Surplus lines brokers are subject to the penalty provisions of the Oklahoma Producer Licensing Act, 36 O.S. §§ 1435.1, 1435.13. Penalties assessed can range from censure to revocation and/or monetary penalties of up to \$1000 per occurrence. In addition, any surplus lines broker who fails to remit the required surplus line tax for more than sixty (60) days after it is due is liable for a civil penalty of not to exceed \$25.00 for each additional day of delinquency.

Questions or comments applicable to this bulletin should be directed to Courtney Phipps (Courtney.Phipps@oid.ok.gov) or Melanie Paxton (Melanie.Paxton@oid.ok.gov), Oklahoma Insurance Department, Five Corporate Plaza, 3625 NW 56th, Suite 100, Oklahoma City, OK 73112.

The Oklahoma Insurance Department encourages readers of this notice to periodically check the Department's website <http://oid.ok.gov> for news and updates to Bulletins and other relevant material.