

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Bulletin 2016-15-INS

**In the matter of
Procurement of Surplus Lines Business by
Licensed Agents**

**Issued and entered
this 31st day of May 2016
By Patrick M. McPharlin
Director**

This Bulletin supersedes Bulletin 85-06, dated July 15, 1985, which is hereby rescinded.

BACKGROUND

One of the underlying purposes of Chapter 19 of the Michigan Insurance Code, MCL 500.1900 *et seq.* (the Code), is to establish a system of regulation which permits orderly access to surplus lines insurance in this state. See MCL 500.1902. Section 1910(4) of the Code, MCL 500.1910(4), requires that the Director maintain a list of those lines of insurance for which coverages the Director determines are generally unavailable in the authorized insurance market. Furthermore, Section 1916, MCL 500.1916, provides that a surplus lines licensee may compensate a licensed agent in this state for obtaining surplus lines business, and that the agent may collect a premium on behalf of a surplus lines licensee who has authorized the agent to do so.

Questions have arisen as to what specific activities an agent may engage in when trying to place surplus lines business, because the authority granted under an agent license is limited to the sale, solicitation, and negotiation of insurance on behalf of the authorized insurers that have appointed the agent to act on their behalf. This bulletin provides guidance regarding the activities an agent may engage in, without requiring surplus lines licensure, when obtaining coverage in the surplus lines insurance market.

REFUSAL REQUIREMENT

Section 1207(4) of the Code, MCL 500.1207(4), provides in part: "If an agent is unable to immediately provide, through his or her insurers that are authorized to underwrite the coverage, all or a part of the coverage requested on a risk, the agent may obtain the part of the coverage refused by his or her insurers through another licensed agent or through a risk sharing plan permitted by state law." The purpose of Section 1207(4), which is commonly known as "the refused or excess statute," is to provide an avenue for the procurement of insurance by an agent of insurers who normally write such coverages but have declined to write all or part of an unusually large or undesirable

risk.¹ This section permits the agent to obtain the refused coverages through another licensed agent. This section, in conjunction with Section 1916, permits an agent to obtain the refused coverages through a Michigan surplus lines licensee.

Surplus lines insurance may not be procured if coverage is available from another licensed agent or through a risk sharing plan created by state law. Surplus lines insurance may be procured by an agent only through a surplus lines licensee and in compliance with the provisions of Chapter 19.

The Director shall consider the placement of a line of insurance on the list of coverages determined to be generally unavailable in the authorized insurance market to constitute refusal by insurers authorized to write such coverages for the purpose of Section 1207(4). A licensed agent, who is appointed to represent insurers whose certificates of authority include the authority to write any of the coverages which have been placed on the Director's most current list, may consider the coverage as having been refused by such insurers and may obtain the requested coverage through a Michigan surplus lines licensee.

If a particular coverage does not appear on the Director's list, both of the following conditions must be met to constitute a refusal within the meaning of Section 1207(4):

1. The insurers that have appointed the agent are authorized to write such coverages and ordinarily do so.
2. The insurers have communicated to the agent that they will not accept the risk or risks with similar characteristics.

The agent may obtain quotations through a surplus lines licensee or other agent but coverage may not be bound through a second agent or surplus lines licensee unless and until the risk has been refused by the authorized insurers that have appointed the agent and coverage is not available through a risk sharing plan created by state law. A surplus lines licensee may rely on the agent's attempts to place with authorized insurers and risk sharing plans to satisfy the requirements of Section 1910 of the Code.

AGENT INVOLVEMENT IN SURPLUS LINES PLACEMENT

Section 1905(2), MCL 500.1905(2), prohibits a person from offering, soliciting, making a quotation on, selling, or issuing a policy of insurance, binder, or any other evidence of insurance with an unauthorized insurer except in compliance with Chapter 19. Section 1905(1) provides that a person "shall not solicit insurance, bind coverage, or in any other manner act as an agent or broker in the transaction . . . unless licensed under this chapter and section 1206a." However, Section 1916 expressly permits agents to

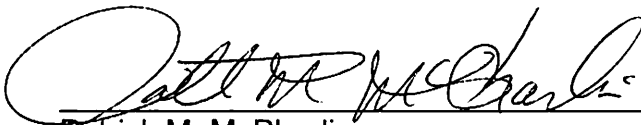
¹ In order to refer business to a surplus lines licensee under Section 1207(4), an agent must be licensed to sell property and casualty insurance. In instances where the agent is licensed to sell life and health only, then the agent must refer the business to an agent licensed to sell property and casualty insurance. That agent may then, if necessary, refer the business to a surplus lines licensee.

“obtain surplus lines insurance business” and “collect a premium on behalf of a surplus lines licensee.” Accordingly, when engaged in the permissible activities of obtaining surplus lines insurance business under Section 1207(4) through a surplus lines licensee, an agent will often have some continuing involvement in the transaction, including, but not limited to, collecting premiums on behalf of surplus lines licensees. Such continued involvement by an agent is permissible to the extent the activity is not prohibited under Chapter 19.

Notably, Sections 1905(1) and 1905(2) do not prohibit an agent from negotiating surplus lines insurance without a surplus lines license.² Therefore, when obtaining surplus lines insurance pursuant to Section 1207(4), an agent may also “confer directly with or offer advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract.” See MCL 500.1201(k). However, an agent may not offer, solicit, make a quote on or sell a policy, or issue a policy or binder related to surplus lines insurance without being licensed under, and otherwise complying with, Chapter 19.

Any questions regarding this bulletin should be directed to:

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A handwritten signature in black ink, appearing to read "Patrick M. McPharlin", is written over a horizontal line.

Patrick M. McPharlin
Director

² Section 1201a(1) requires producers to be licensed for the lines of insurance which they sell, solicit, or negotiate. However, Section 1201a(2) makes clear that, with the exception of Sections 1204e and 1206a, Chapter 12 does not apply to excess and surplus lines agents and brokers. Therefore, Sections 1905(1) and (2) are controlling with respect to the activities that require surplus lines licensure.