

**SURPLUS LINES CHECKLIST FOR ELIGIBLE AND INELIGIBLE SURPLUS LINES
INSURERS**

Governing Minnesota Statutes 60A.195 to 60A.2095

- 1 Rates and Forms pursuant to § 60A.197 of eligible and ineligible surplus lines insurers shall not be subject to the insurance laws except that a rate shall not be unfair and discriminatory. Forms used by eligible and ineligible surplus lines insurers pursuant to Sections § 60A.195 to § 60A.209 shall not be subject to the insurance laws except that the policy shall not contain language which misrepresents the true nature of the policy or the class of policy.
- 2 Rates and Forms of surplus lines companies are not required to be filed with the Minnesota Department of Commerce. Minnesota Statute § 60A.198 entitled "Transaction of Nonadmitted Insurance" in accordance with Subdivision 3, clause (d) a surplus lines company agrees to file with the Commissioner of Revenue all returns required by Chapter 2971 and paying to the Commissioner of Revenue all amounts required under Chapter 2971 and pursuant to clause (f) paying a fee as prescribed by Section § 60K.55. The primary contact with the Department of Revenue is Mr. Jerry Sieve at (651) 556-4729, or Jerry.Sieve@state.mn.us. The back-up alternate is Joann Waid at (651) 556-4919, or Joann.Waid@state.mn.us. For your convenience, here is the link to the Minnesota Department of Revenue website: www.revenue.state.mn.us.
- 3 Pursuant to § 60A.198 "Transaction of Nonadmitted Insurance", Subdivision 5 entitled "Disclosures", requires before placement of insurance with an eligible surplus lines insurer a surplus lines broker shall inform an insured or insured's representative that coverage may be placed in conformance with Section § 60A.195 to § 60A.209 with an insurer not licensed in this state and that payment of loss is not guaranteed in the event of an insolvency of the eligible surplus lines insured. (The surplus lines coverage provided by a surplus line company does not have the Minnesota Insurance Guaranty Association safety net.) Agents and potential insurers should review Minnesota Statute § 60A.201 entitled "Placement of Insurance by a Broker". Subdivision 1 entitled "Restrictions" advises that insurance shall not be placed by a surplus lines broker with a nonadmitted insurer when coverage is available from a licensed insurer. Subdivision 2 entitled "Availability of Other Coverage; Presumption" states there shall be a rebuttable presumption that the following coverages are available from a licensed insurer:
 - (a) all mandatory automobile insurance coverages required by chapter 65B;
 - (b) private passenger automobile physical damage coverage;
 - (c) homeowners and property insurance on owner-occupied dwellings whose value is less than \$500,000. This figure shall be changed annually by the commissioner by the same percentage as the Consumer Price Index for the Minneapolis-St. Paul Metropolitan Area is changed. This particular figure is done on an annual basis by the department actuary. The current amount is \$1,806,000.
 - (d) any coverage readily available from three or more licensed insurers unless the licensed insurers quote a premium and terms not competitive with a premium and terms quoted by an eligible surplus lines insurer and;
 - (e) (e) workers' compensation insurance, except excess workers' compensation insurance which is not available from the Workers' Compensation Reinsurance Association.
- 4 § 60A.201 "Placement of Insurance by Broker", Subdivision 3 entitled "Unavailability of other coverage; presumption" advises that there shall be a rebuttal presumption that the following coverages are unavailable from a licensed insurer:
 - (a) coverages where one portion of the risk is acceptable to the licensed insurers but another portion of the same risk is not acceptable. The entire coverage may be placed with eligible surplus lines insurers if it can be shown that the eligible surplus lines insurer will accept the entire coverage but not the rejected portion alone; and

- (b) any coverage that the broker is unable to procure after diligent search among licensed insurers.
- 5 Pursuant to Minnesota Statute § 60A.207 entitled “Policies to Include Notice”, the following paragraph is required to be stamped on the front page of each policy. Each policy, cover note, or instrument evidencing nonadmitted insurance from an eligible surplus lines insurer which is delivered to an insured or a representative of an insured shall have printed, typed, or stamped upon its face in not less than 10 point type, the following notice: “THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THE INSURER IS AN ELIGIBLE SURPLUS LINES INSURER BUT IS NOT OTHERWISE LICENSED BY THE STATE OF MINNESOTA. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED.” This notice shall not be covered or concealed in any manner.
- 6 Pursuant to Minnesota Statute § 60A.209 entitled “Insurance Procured from Ineligible Insurers”, Subdivision 1: “Authorization; regulation” states that a resident of this state may obtain insurance from an ineligible surplus lines insurer in this state through a surplus lines broker. The broker shall first attempt to place the insurance with a licensed insurer, or if that is not possible, with an eligible surplus lines insurer. If coverage is not obtainable from a licensed insurer or an eligible surplus lines insurer, the broker shall certify to the commissioner, on a form prescribed by the commissioner, that these attempts were made. Upon obtaining coverage from an ineligible surplus lines insurer, the broker shall:
- (a) Have printed, typed, or stamped upon the face of the policy in not less than 10 point type the following notice: “THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THIS INSURANCE IS PLACED WITH AN INSURER THAT IS NOT LICENSED BY THE STATE NOR RECOGNIZED BY THE COMMISSIONER OF COMMERCE AS AN ELIGIBLE SURPLUS LINES INSURER. IN CASE OF ANY DISPUTE RELATIVE TO THE TERMS OR CONDITIONS OF THE POLICY OR THE PRACTICES OF THE INSURER, THE COMMISSIONER OF COMMERCE WILL NOT BE ABLE TO ASSIST IN THE DISPUTE. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED.” This notice may not be covered or concealed in any manner.
- 7 Common Questions and Recommendations:
Pursuant to Minnesota Statutes § 60A.203 and § 60A.209 it is recommend that each surplus lines broker maintain a list of each surplus lines transaction entered into and that the list contain at least the following information for each transaction:
- (1) Policy number, (2) effective and expiration dates, (3) name and address of the insured, (4) name and address of the insurance company, (5) total premium, and (6) when applicable pursuant to Minnesota Statute § 60A.209, Subdivision 1, a “remarks” section explaining in sufficient detail the attempts that were made to place the insurance with a licensed insurer or if that was not possible, with an eligible surplus lines insurer.

Questions regarding surplus lines insurance should be forwarded to Nicholas Schroeder, Executive Director, at (320) 679-4244 or nschroeder@mnsa.com