

**§1494. Required contract provisions**

A person acting in the capacity of an MGA may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of those responsibilities. The contract must contain the following minimum provisions. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**1. Termination.** The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination. However, the suspension of an MGA does not relieve the MGA of the responsibility to service business in existence at the time of the suspension. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**2. Accounting.** The MGA shall 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. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**3. Bank as fiduciary.** All funds collected for the account of an insurer must be held by the MGA in a fiduciary capacity in a bank that is a member of the Federal Reserve System. This account must be used for all payments on behalf of the insurer. The MGA may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**4. Records.** Separate records of business written by the MGA must be maintained. The insurer must have access and may copy all accounts and records related to its business in a form usable by the insurer. The superintendent must have access to all books, bank accounts and records of the MGA in a form usable to the superintendent. These records must be retained according to section 3408. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**5. Nonassignable.** The contract may not be assigned in whole or part by the MGA. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**6. Guidelines.** The contract must include appropriate underwriting guidelines including:

A. The maximum annual premium volume; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

B. The basis of the rates to be charged; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

C. The types of risks that may be written; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

D. Maximum limits of liability; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

E. Applicable exclusions; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

F. Territorial limitations; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

G. Policy cancellation provisions; and [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

H. The maximum policy period. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

The insurer has the right to cancel or not to renew any policy of insurance subject to all applicable laws and rules regarding the cancellation and nonrenewal of insurance policies.

[PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**7. Settlement authority.** If the contract permits the MGA to settle claims on behalf of the insurer:

A. All claims must be reported to the insurer in a timely manner; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

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 superintendent or exceeds the limit set by the insurer, whichever is less;
- (2) Involves a coverage dispute;
- (3) May exceed the MGA's claims settlement authority;
- (4) Is open for more than 6 months; or
- (5) Is closed by payment of an amount awarded as a result of a judicial proceeding or an amount set by the insurer, whichever is less; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

C. All claim files must be the joint property of the insurer and MGA; except that, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The MGA must have reasonable access to and may copy the files on a timely basis; and [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

D. Any settlement authority granted to the MGA may be terminated for cause upon written notice by the insurer to the MGA 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. Upon termination of the MGA's authority to settle claims, the MGA shall desist from any draw on funds of the insurer and shall immediately forward to the insurer all claims files with the MGA's immediate possession and any claims received thereafter. The MGA shall promptly transfer to the insurer any funds owed to the insurer or to any policyholder and shall transfer to the insurer any property of the insurer that is within the MGA's actual or constructive possession. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

[PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**8. Transmission.** When electronic claims files are in existence, the contract must address the timely transmission of the data.

[PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**9. Interim profits.** If the contract provides for a sharing of interim profits by the MGA and the MGA 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 may not be paid to the MGA until one year after they are earned for property insurance business and 5 years after they are earned on casualty business and not until the profits have been verified pursuant to section 1495.

[PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

**10. Prohibitions.** The MGA may not:

A. Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for reinsurance both 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; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

B. Commit the insurer to participate in insurance or reinsurance syndicates; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

C. Make use of any producer without ensuring that the producer is lawfully licensed in this State to transact the kind of insurance for which the producer is used; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

D. Without prior approval of the insurer, pay or commit the insurer to pay a claim over an amount specified by the insurer, net of reinsurance, which may not exceed 1% of the insurer's policyholder surplus as of December 31st of the preceding year; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

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; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

F. Make use of any producer who serves on the insurer's board of directors; [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

G. Jointly employ an individual who is employed with the insurer; or [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

H. Assign specific duties under a contract with an insurer to other parties. [PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

[PL 1997, c. 573, §1 (NEW); PL 1997, c. 573, §2 (AFF).]

#### SECTION HISTORY

PL 1997, c. 573, §1 (NEW). PL 1997, c. 573, §2 (AFF).

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