STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner
Financial Conditions Division

Mailing Address:	Telephone: (304) 558-2100	Location:
Financial Conditions	Facsimile: (304) 558-1365	Financial Conditions
PO Box 50540	Email: financial.conditions@wvinsurance.gov	1124 Smith Street, Rm 102
Charleston, WV 25305-0540	www.wvinsurance.gov	Charleston, WV 25301

Managing General Agent Agency Producer
Managing General Agent Individual Producer
Renewal Instructions

No person may act in the capacity of a Managing General Agent (hereafter "MGA") with respect to risks located in this State for an insurer licensed in this State unless the person holds a valid West Virginia producer license and appointment authorizing the producer to sell the applicable kinds of insurance and unless licensed with the Insurance Commissioner as a Managing General Agent pursuant to W. Va. Code §33-37-2. No person may 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 person holds a valid West Virginia producer license in this State and unless licensed with the Insurance Commissioner as a Managing General Agent.

A MGA is defined as:

Any person, firm, association or corporation who:

(1) Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office); and

(2) Acts as an agent for such 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:

(A) Adjusts or pays claims in excess of ten thousand dollars per claim; or

(B) Negotiates reinsurance on behalf of the insurer.

W. Va. Code §33-37-2 also gives the Insurance Commissioner the authority to require a bond and an errors and omissions policy of a Managing General Agent. While reserving the right hereafter on an individual basis to consider and establish the amount of any bond and the need for an errors and omissions policy, the Insurance Commissioner will presently accept as sufficient under this Code section the bonding and errors and omissions coverage required by an insurer of its Managing General Agent. A copy of the insurer's bond and errors and omissions requirements and proof that the Managing General Agent has obtained and maintained the required bond and errors and omissions coverage must be filed with the application.

License Filing Requirements

The following must be submitted to and approved by the Insurance Commissioner in order to renew a license to act as a MGA in the State of West Virginia:

1) A completed MGA Renewal Application (Form MGA-4 for Agency Producer; Form MGA-5 for Individual Producer.)
2) Annual license renewal fee is $200.00
3) A copy of each insurer's bond and errors and omissions requirements.
4) Evidence that the MGA has obtained the bond and errors and omissions coverages required by each insurer.
5) A list of the names and addresses of all insurers doing business in the State of West Virginia with which the producer has a contract to act or for whom the producer acts as an MGA.
6) A copy of any new, renewed, or amended contract(s) in force with each insurer doing business in the State of West Virginia with which the producer has a contract to act or for whom the producer acts as an MGA
7) A completed MGA Contract Review Form (Form MGA-3) for each new, renewed, or amended contract submitted.

Required Contract Provisions

No MGA 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 specifies the division of common or shared responsibilities. The contract shall contain the minimum provisions of W. Va. Code §33-37-3 as follows:

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 a MGA does not relieve the MGA of the responsibility to service business in existence at the time of suspension.

2) **Accounting**. The MGA 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) **Fiduciary Accounts**. All funds collected for the account of an insurer must be held by the MGA in a fiduciary capacity with a FDIC insured financial institution. This account must be used for all payments on behalf of the insurer. The MGA may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

4) **Records**. Separate records of business written by the MGA shall be maintained. The insurer shall have access and may copy all accounts and records related to its business in a form usable by the insurer. The Commissioner shall have access to all books, bank accounts and records of the MGA in a form usable to the Commissioner.

5) **Nonassignable**. The contract may not be assigned in whole or in part by the MGA.

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

   a) The maximum annual premium volume.
   b) The basis of the rates to be charged.
   c) The types of risks that may be written.
   d) Maximum limits of liability.
   e) Applicable exclusions.
   f) Territorial limitations.
   g) Policy cancellation provisions.
   h) The maximum policy period.

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

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.

b) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:
   i) Has the potential to exceed an amount determined by the Commissioner or exceeds the limit set by the insurer, whichever is less.
   ii) Involves a coverage dispute.
   iii) May exceed the MGA's claims settlement authority.
   iv) Is open for more than six months; or
   v) Is closed by payment of an amount set by the Commissioner or an amount set by the company, whichever is less.

c) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate. The MGA shall have reasonable access to and may copy the files on a timely basis.

d) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice 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.

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

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 will not be paid to the MGA 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 W. Va. Code §33-37-4.

10) **Advertising**. The MGA may use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use.

11) **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 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 individual insurance producer without assuring that the individual insurance producer is lawfully licensed in this State to transact the kind of insurance for which the producer is appointed.

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 shall not exceed one percent of the insurer's policyholder surplus as of December 31st 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) Except as provided in W. Va. Code §33-37-4(g), permit its sub-producer to serve on the insurer's board of directors;

g) Jointly employ an individual who is employed with the insurer.

h) Appoint a sub-Managing General Agent.

Non-renewal of License

A license to act as a MGA in the State of West Virginia may be non-renewed when the Commissioner receives notification of termination of the contract from the insurer pursuant to W. Va. Code §33-37-4(e).

Questions

Access West Virginia Code at http://www.legis.state.wv.us/legishp.html
E-mail Financial Conditions Division at: Financial.Conditions@wvinsurance.gov; or phone at (304) 558-2100