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**IDAPA 18
TITLE 01
CHAPTER 64**

18.01.64 - MANAGING GENERAL AGENTS

000. LEGAL AUTHORITY.

This rule chapter is promulgated pursuant to authority granted in the Managing General Agent Act (MGA Act), Chapter 15, Title 41, Idaho Code, as well as, the authority granted by Chapter 2, Title 41, Idaho Code, and Chapter 52, Title 67, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

This rule chapter is promulgated to implement and administer provisions of the MGA Act. (7-1-93)

002. -- 003. (RESERVED).

004. DEFINITIONS.

01. Applicability Of Statutory Definitions. The definitions contained in the MGA Act as set forth in Section 41-1502, Idaho Code, shall apply in the construction of this rule chapter in addition to the definitions contained herein. (7-1-93)

02. Bond. "Bond" shall mean a surety bond in an amount delineated in Subsection 013.01 to be held in trust for the benefit and protection of insurers whose money the MGA handles. (7-1-93)

03. Errors And Omissions Policy. "Errors and Omissions Policy" shall mean a policy of insurance providing coverage for claims arising out of the MGA's negligent acts, errors or omissions. (7-1-93)

04. Department. "Department" means the Idaho Department of Insurance. (7-1-93)

05. Director. "Director" means the Director of the Idaho Department of Insurance. (7-1-93)

005. -- 010. (RESERVED).

011. NOTICE PROVISIONS.

01. Notice By MGA. MGA: Within sixty (60) days of the implementation of this rule chapter any person, firm, association or corporation acting in the state of Idaho in the capacity of an MGA as defined in Section 41-1502(3), Idaho Code, must provide notice to the Director of the Department. Notice shall include: (7-1-93)

a. A certified copy of the surety bond required by Subsection 013.01. (7-1-93)

b. Proof of insurance coverage as required by Subsection 013.02. (7-1-93)

c. The appropriate nonrefundable designation fee required by IDAPA 18.01.44. (7-1-93)

d. A list of all names and addresses of insurers doing business in the State of Idaho or Idaho domestic insurers with which the MGA has a contract and a verified statement on a form provided by the Department that the contract(s) contain the provisions required by Section 41-1504, Idaho Code. (7-1-93)

02. Notice By Insurer. (7-1-93)

a. Foreign and Alien Insurers: Within sixty (60) days of the implementation of this rule chapter, and thereafter, within thirty (30) days of entering into a contract with any person, firm, association or corporation meeting the definition of a MGA as provided in Section 41-1502(3), Idaho Code, and if, pursuant to the terms of the contract the MGA will be providing services to the insurer within the State of Idaho, the insurer must provide notification of the appointment of the MGA to the Director of the Department. (7-1-93)

- b.** Domestic Insurers: Within sixty (60) days of the implementation of this rule chapter, and thereafter, within thirty (30) days of entering into a contract with any person, firm, association or corporation meeting the definition of a MGA as provided in Section 41-1502(3), Idaho Code, the insurer must provide notification of the appointment of the MGA to the Director of the Department. (7-1-93)
- c.** Notice by the insurer shall include: (7-1-93)
- i.** The name and address of the MGA; (7-1-93)
 - ii.** A statement of the duties the applicant is expected to perform on behalf of the insurer; (7-1-93)
 - iii.** The lines of insurance for which the applicant is authorized to act; (7-1-93)
 - iv.** Proof that the MGA has met the bonding and insurance requirements of Section 013; (7-1-93)
 - v.** Procedures and timetable for conducting an onsite review of the underwriting and claims processing operation of the MGA as required by Section 41-1505(3), Idaho Code; and (7-1-93)
 - vi.** The name of an officer of the insurer responsible for the contract. (7-1-93)

012. CONTINUATION OF DESIGNATION OF A MANAGING GENERAL AGENT.

Designation of a MGA with the Idaho Department of Insurance shall continue in force and effect under the following conditions: (7-1-93)

01. Fees. On or before July 1 of each year the Department receives payment of the redesignation fee provided in IDAPA 18.01.44. (7-1-93)

02. Proof Of Compliance With Bonding And Insurance Requirements. On or before July 1 of each year the Department is provided proof of continued compliance with the bonding and insurance requirements of Section 013. (7-1-93)

03. Additional Information. On or before July 1 of each year the Department is provided with amendments to the list of names and addresses of insurers doing business in the state of Idaho or Idaho domestic insurers with which the MGA has a contract and a verified statement on a form provided by the Department that the contract(s) contain the provisions required by Section 41-1504, Idaho Code. (7-1-93)

04. Continued Licensure. Continued licensure as an agent pursuant to the provisions of Chapter 10, Title 41, Idaho Code. (7-1-93)

013. SECURITY PAYMENTS.

01. Bond. All MGAs shall acquire a surety bond as defined in Subsection 044.02 for the protection of the insurer and insureds. The bond shall be in the amount of fifty thousand dollars (\$50,000) or ten percent (10%) of the amount of total funds handled within the preceding year, whichever is greater. The bond amount shall be adjusted accordingly on or before July 1 of each year. Coverage shall not be written by the insurer or an affiliate of the insurer employing the MGA. The bond shall be issued by a surety insurer admitted to conduct business in the state of Idaho. A copy of the executed bond shall be filed with the Department. (7-1-93)

02. Errors And Omissions Policy. All MGAs shall acquire and maintain an errors and omissions insurance policy as defined in Section 004. The policy coverage limit shall be set at two hundred and fifty thousand dollars (\$250,000) or twenty-five percent (25%) of the gross amount of direct written premiums received by an insurer for the previous calendar year that are attributable to the MGA, whichever is greater. The policy coverage limit shall be adjusted accordingly on or before July 1 of each year. Unless approved by the director, coverage shall not be written by the insurer or an affiliate of the insurer employing the MGA. Proof of insurance shall be filed with the Department. (7-1-93)

014. INDEPENDENT AUDIT OR EXAMINATION.

01. Annual Independent Audit Of MGA. An independent audit by a certified public accountant shall be conducted annually for MGAs currently under contract, and shall be contracted for by the insurer. The independent audit shall include the following: (7-1-93)

- a. Report of independent certified public accountant; (7-1-93)
- b. Balance sheet; (7-1-93)
- c. Statement of income; (7-1-93)
- d. Statement of cash flow; (7-1-93)
- e. Statement of income and retained earnings; (7-1-93)
- f. Notes on financial statements - these notes shall be those required by General Accepted Accounting Principals; and (7-1-93)
- g. A copy of a management letter or a narrative statement setting forth what would have been the content of the management letter had such letter been completed. (7-1-93)

02. Retention Of Report By Insurer. An insurer shall retain a current independent audit by a certified public accountant of each MGA with which the insurer has done business. (7-1-93)

03. Examination Of MGA. A MGA may be examined by the Department as if it were an insurer. The Department shall retain authority to examine a MGA notwithstanding the termination of the MGA's contractual authority. Pursuant to the provisions of Chapter 2, Title 41, Idaho Code, the expense of such examination shall be reimbursed to the Department by the insurer employing the MGA. (7-1-93)

015. TERMINATION OF CONTRACT.

01. Notice To The Department. Within thirty (30) days of the termination of an agreement between a MGA and an Idaho domestic insurer or a foreign insurer for which the MGA was conducting business in the state of Idaho, the insurer must provide notice to the Department of the termination. Notice shall include: (7-1-93)

- a. The name of the person, firm, association or corporation acting as a MGA under the terms of the contract; and (7-1-93)
- b. The basis for the termination. (7-1-93)

02. Delivery Of Records To Insurer Upon Termination Of Contract. If the contract between an insurer and a MGA is terminated for any reason, the MGA shall, upon request by the insurer, deliver all records to the insurer within ninety (90) days of the request. (7-1-93)

016. PENALTIES AND LIABILITIES:

01. Penalties For Violation Of The MGA Act Or This Chapter Rule. If the Director finds, after a hearing conducted in accordance with the Idaho Insurance Code and the Rules and Procedures adopted by the Department, that any person, firm, association or corporation has violated any of the provisions contained in the MGA Act or this rule chapter, the Director may order: (7-1-93)

- a. For each separate violation a penalty in an amount not to exceed ten thousand dollars (\$10,000); (7-1-93)
- b. Revocation or suspension of the agent's license or the company's certificate of authority; (7-1-93)

c. The MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses of the insurer caused by a violation of the provisions of this rule chapter committed by the MGA. (7-1-93)

02. Other Penalties Not Affected. Nothing contained in this rule shall effect the right of the Director to impose any other penalties provided in the insurance statutes or regulations. (7-1-93)

03. Rights Of Policyholders, Claimants and Auditors Not Limited. Nothing contained in this rule is intended to, or shall in any manner, limit or restrict the rights of policyholders, claimants and auditors. (7-1-93)

017. SEVERABILITY.

If any section or a portion of any section of this rule chapter or the applicability thereof to any person or circumstances is held invalid by a court, the remainder of the rule or the applicability of such provisions to other persons or circumstances shall not be affected thereby. (7-1-93)

018. -- 999. (RESERVED).

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