ARTICLE 45-09
REGULATION OF UNAUTHORIZED INSURERS AND INSURANCE

Chapter
45-09-01 Surplus Lines Insurance

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SURPLUS LINES INSURANCE

Section
45-09-01-01 Definitions
45-09-01-02 Surplus Lines Insurance Producer Application
45-09-01-03 Surplus Lines Insurance Producer Must Conduct Search
45-09-01-04 Presumption - Diligent Search
45-09-01-05 Other Acceptable Lines of Coverage
45-09-01-06 Surplus Lines Affidavit - Time for Filing [Repealed]
45-09-01-07 Surplus Lines Affidavit - Limits on Availability [Repealed]
45-09-01-08 Additional Policy Endorsement Requirement [Repealed]
45-09-01-09 Statement of Taxable Premiums [Repealed]

45-09-01-01. Definitions.

Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to them under North Dakota Century Code chapters 26.1-02, 26.1-26, and 26.1-44.

History: Effective January 1, 1982.
General Authority: NDCC 26.1-44-09
Law Implemented: NDCC 26.1-44

45-09-01-02. Surplus lines insurance producer application.

The insurance commissioner will not issue a resident surplus lines insurance producer's license until the applicant has met the requirements of North Dakota Century Code section 26.1-26-17, has completed and filed with the commissioner a completed application for a surplus lines insurance producer license, and paid the license fee. An applicant for a nonresident surplus lines insurance producer license must hold an active resident surplus lines insurance producer license in the applicant's home state and must complete and file with the commissioner an application for a nonresident surplus lines insurance producer license and pay the license fee.

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008; July 1, 2012.
General Authority: NDCC 26.1-26-49, 26.1-44-09
Law Implemented: NDCC 26.1-26-17, 26.1-26-20

45-09-01-03. Surplus lines insurance producer must conduct search.

The licensed surplus lines insurance producer seeking the placement of nonadmitted insurance must conduct a diligent search to ascertain whether the insurance, indemnity contract, or surety bond can be procured from a company authorized to do business in this state. The surplus lines insurance producer may rely on a diligent search done by a licensed insurance producer or the insured if the surplus lines insurance producer deems it sufficient. Within sixty days after placing of any surplus lines insurance, the surplus lines insurance producer must complete and file with the commissioner a surplus lines affidavit confirming such a search has been done. The affidavit is not required if the insured is an exempt commercial purchaser as defined in North Dakota Century Code section 26.1-44-02.

History: Effective January 1, 1982; amended effective December 1, 2001; July 1, 2012.

General Authority: NDCC 26.1-44-09
Law Implemented: NDCC 26.1-44-02

45-09-01-04. Presumption - Diligent search.

A presumption that a diligent search has been made and that the insurance producer was unable to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state is created when the insurance, contract, or bond is written in one of the categories set out in Appendix I.

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008; July 1, 2012.
General Authority: NDCC 26.1-44-09
Law Implemented: NDCC 26.1-44-02

45-09-01-05. Other acceptable lines of coverage.

The categories designated in Appendix I are not to be considered as the only lines of coverage in which unauthorized insurers may be used. Other categories of coverage not listed may be acceptable because of special underwriting considerations, i.e., losses, high exposure, etc. Any exceptions must be fully explained on the surplus lines report of placement.

The securing of advantage as to lower premium rates or as to the terms of the insurance contract do not constitute justification nor are they special underwriting considerations sufficient to allow the surplus lines broker to use an unauthorized company nor lines of coverage other than those designated in Appendix I.

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008; July 1, 2012.
General Authority: NDCC 26.1-44-09
Law Implemented: NDCC 26.1-44-02

45-09-01-06. Surplus lines affidavit - Time for filing.

Repealed effective July 1, 2012.

45-09-01-07. Surplus lines affidavit - Limits on availability.

Repealed effective July 1, 2012.

45-09-01-08. Additional policy endorsement requirement.

Repealed effective July 1, 2012.

45-09-01-09. Statement of taxable premiums.

Repealed effective July 1, 2012.

APPENDIX I

Categories of Acceptable Surplus Lines Coverage

The following categories of surplus lines coverage are not the only lines which may be written in North Dakota. Other lines of coverage not on this list may be acceptable because of special underwriting considerations. Any exceptions must be fully explained on the surplus lines report of placement.

If the coverage written is in an approved category, there is a presumption that after diligent search the insurance, indemnity contract, or surety bond desired cannot be procured from a company authorized to do business in this state.

These categories may be changed from time to time at the discretion of the insurance commissioner subject to provisions of North Dakota Century Code chapter 28-32, the Administrative Agencies Practice Act.

1. Fiduciary liability.
2. Professional liability (E & O) except for hospitals.
3. Directors and officers.
4. Ocean marine cargo, liability and hull.
5. Hazardous cargo and short-term trip transit.
6. Bridges (large).
7. Heavy woodworking property (unprotected, high-value sawmills).
8. Product liability (hazardous).
9. Ski lifts and tows' liability.
10. Fireworks, ammunition, fuse, cartridges, power, nitroglycerine, explosive gases.
11. Environmental impairment - pollution.
12. Kidnap ransom.
13. Oil and gas liability and marine.
14. Livestock mortality (high values and unusual).
15. Short tail (hole-in-one, 300 bowling score, etc.).
16. Large utilities (generation, transmission).
17. Building demolition and moving.
18. Mono line liquor legal liability.
19. Surcharged fire and allied lines excluding uncontrolled marine.
20. High-value substandard private passenger automobile.
21. Commercial automobile physical damage coverage in excess of rating organizations' filed rates.
22. Any excess liability coverages.

23. Day care liability insurance coverages.

History: Amended effective February 1, 1983; November 1, 1987; December 1, 2001; January 1, 2008; July 1, 2012.
General Authority: NDCC 26.1-44-09
Law Implemented: NDCC 26.1-44-02