



Insurance Agents  
& Brokers

A COMPLETE GUIDE TO:

# Surplus Lines

PA



# TABLE OF CONTENTS

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In Summary	3
Laws & Regulations	4
FAQ - Frequently Asked Questions	5
Surplus Lines E&O considerations	16
Appendix	
Current Export List: [50 Pa.B. 4631]	18
Sample letter for renewal business replaced in SL market (existing admitted policy is non-renewed and only options are non-admitted)	20
Sample letter for new business placed in the SL market	21

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## DISCLAIMER

**This document is not a legal opinion and should not be relied upon as such. The intent of this document is to provide a general background regarding the topic or topics discussed, not to provide legal advice. Producers and agencies should consult an attorney regarding specific situations and specific questions with respect to the topic or topics covered in this document. Neither the Insurance Agents & Brokers nor any of its employees shall be responsible for any errors or omissions regarding any statements made in this document, nor any errors or omissions regarding any statutes, regulations, court rules, and/or any other government documents cited in this document.**

# IN SUMMARY

## Surplus Lines

The surplus lines insurance market is intended to provide coverage for nonstandard or unique risks that do not fit the underwriting guidelines of insurers licensed to do business in the state (admitted insurers). Surplus lines insurance may be procured through licensed surplus lines agents (surplus lines licensees), with access to eligible Surplus Lines insurers that appear on the list published by the Insurance Department.

The Surplus Lines law also provides that advisory organizations may be formed to perform several functions: facilitate compliance with applicable laws & regulations, communicate information, advise & consult with the Insurance Department, and enable the examination of all coverages for compliance. In Pennsylvania, such a role was awarded to the Pennsylvania Surplus Lines Association (PSLA). **In short, all your Surplus Lines policies are first examined by the PSLA. Any noncompliance detected at that level is reported to the Insurance Department for enforcement.**

# LAWS & REGULATIONS

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## ▲ Surplus Lines law

[govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=ND99137FF009C4AE38A061B9EC0288B5F&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](http://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=ND99137FF009C4AE38A061B9EC0288B5F&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

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## ▲ Surplus Lines Regulation: Chapter 124

[pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/031/chapter124/chap124toc.html&d=](http://pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/031/chapter124/chap124toc.html&d=)

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# FAQ - FREQUENTLY ASKED QUESTIONS

## 1.0 GENERAL

### 1.1 What is a Surplus Lines Insurer?

Property/casualty insurance coverage isn't always available from insurers licensed in the state (admitted companies). This can be the case for risks of an unusual nature or for those risks that admitted companies simply do not want to write. For such risks, insurance may be purchased from a non-admitted or "surplus lines" carrier.

An eligible surplus lines insurer is a company that is approved to transact the business of insurance in Pennsylvania, but is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. Such companies are referred to as eligible, non-admitted insurers.

#### USEFUL LINK

Pennsylvania Eligible Surplus Lines Company Search

[insurance.state.pa.us/dsf/slasearch.html](https://insurance.state.pa.us/dsf/slasearch.html)

### 1.2 What is a Surplus Lines Licensee?

When coverage is not available from "admitted" or "authorized" insurers, a Surplus Lines Licensee assists insurance producers in placing insurance coverage with eligible, non-admitted insurers. Surplus Lines Licensees have specific duties, including verifying that the insured has received special notifications at the time of coverage.

### 1.3 What are the special disclosures that need to be made to the insured?

The insured must be informed in writing (on the quotation itself) that:

- ▲ the insurer with which the business will be placed is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation; and,
- ▲ in the event of insolvency, losses will not be paid by the Pennsylvania Property & Casualty Insurance Guaranty Association.

### 1.4 When must this written disclosure be made?

At the time of presentation of any quote.

### 1.5 Who is responsible to provide this written disclosure?

The law requires the Surplus Lines Licensee to make the written disclosure *either* directly to the insured or indirectly through the producer. Even if given directly by the Surplus Lines Licensee, producers should, for E&O purposes, provide their own disclosure.

### 1.6 If the Surplus Lines carrier becomes insolvent, will there be guaranty fund coverage?

No. As mentioned in 1.3, in the event of insolvency of a surplus lines insurer, losses will not be paid by the Pennsylvania Property and Casualty Insurance Guaranty Association. The insured must be informed of this before placement through a Surplus Lines insurer.

## 2.0 AUTHORITY / LICENSING POWERS (modified from Act 147 Q&A)

### 2.1 Does the producer licensing law in PA grant me Surplus Lines authority?

No. The producer licensing law change which occurred in 2002 did NOT change the Surplus Lines Law. In order for a producer to secure surplus lines coverage, he/she must go through a Surplus Lines Licensee or secure a Surplus Lines license.

### 2.2 Does the producer licensing law mean that all producers may utilize the Surplus Lines market?

Yes, as producers acting as the “representative of the consumer” (broker), a producer may utilize the Surplus Lines marketplace.

When placing a risk with the Surplus Lines marketplace, there are certain requirements. One of these is identifying three admitted carriers that write the class of business who have rejected the risk and executing an affidavit attesting to the three declinations (also see question 3.3). This affidavit is completed by the producer and transmitted to the Surplus Lines Licensee.

If you do not have previous experience in dealing with surplus lines placements, IA&B suggests that you review the writing (a.k.a. retail) producer’s requirements under the Surplus Lines Law (particularly sections 1604, 1608, 1609 and 1610) and the Surplus Lines Regulations. You also want to work with an experienced surplus lines agency that can offer you necessary support.

Remember, when placing a risk in the Surplus Lines market, you are acting as a broker, and you also need a broker agreement signed by your client.

### 2.3 Does the Surplus Lines Licensee need to hold a resident license in PA?

No. The law changed in 2002 and now provides for a nonresident Surplus Lines License to be issued in Pennsylvania. It is important for you to make sure that the Surplus Lines producer you are selecting is properly licensed (also see question 3.1).

For multi-state risks, the license is only required for insureds whose home state is Pennsylvania, and for which the placement will be done in Pennsylvania.

### 2.4 I would like to get a Surplus Lines license. What do I need to do?

If you are already licensed as a Property & Casualty insurance producer in Pennsylvania, you need to:

- ▲ take and pass a specific licensing examination for Surplus Lines,
- ▲ apply for a license to the Insurance Department, and
- ▲ pay a \$200 fee.

If you work in a Corporation or Partnership, the agency will also need to apply for a Business Entity Surplus Lines license and pay a \$200 fee again.

#### USEFUL LINKS 2.2

Pennsylvania Code and Bulletin Search

[pacodeandbulletin.gov](http://pacodeandbulletin.gov)

Pennsylvania Statute:  
Title 40, Chapter 2, Article XVI

[pasla.org/sl\\_law.htm](http://pasla.org/sl_law.htm)

#### USEFUL LINKS 2.4

Pennsylvania Surplus Lines Association, New Licensee Overview

[pasla.org/lic\\_overview.htm](http://pasla.org/lic_overview.htm)

Pennsylvania Insurance Dept  
Surplus Lines info:

Individual:

[insurance.pa.gov/Licensees/MaintainYourLicense/Pages/Surplus-Lines-\(Individual\).aspx](http://insurance.pa.gov/Licensees/MaintainYourLicense/Pages/Surplus-Lines-(Individual).aspx)

Business:

[insurance.pa.gov/Licensees/MaintainYourLicense/Pages/Surplus-Lines-\(Business\).aspx](http://insurance.pa.gov/Licensees/MaintainYourLicense/Pages/Surplus-Lines-(Business).aspx)

## 2.5 Where can I find material to prepare for the Surplus Lines licensing examination?

You can contact the Pennsylvania Surplus Lines Association at:

Pennsylvania Surplus Lines Association  
180 Sheree Blvd., Suite 3100  
Exton, PA 19341  
www.pasla.org

Phone: 610-594-1340  
Toll Free: 888-209-3230 (PA only)  
Fax: 610-594-7623

### USEFUL LINKS 2.5

Pennsylvania Surplus Lines Association  
[pasla.org](http://pasla.org)

## 3.0 PROCEDURES

We all know that the marketplace appetite of carriers changes constantly and the markets ebb and flow. Because of this, the strict requirements of the statute are not always reconcilable with the specific situation you may encounter with a risk—and the ‘shades of grey’ creep in.

In the following questions relating to the diligent search requirement, we offer some suggestions on how to approach these difficult situations, but each producer needs to recognize that each placement can be different and to use individual analysis and knowledge to chart a rationale for compliance.

In addition, updates were made between 2011 and 2013 to bring Pennsylvania into compliance with the federal Non-admitted Reinsurance Reform Act (NRRA), which redefines and streamlines Surplus Lines placement and tax collection, and brings more uniformity to the treatment of risks with multi-state exposures.

### 3.1 How can I know for sure that the Surplus Lines Licensee I work with is properly licensed in PA?

You may be familiar with quite a few of the big Surplus Lines Licensees which operate in Pennsylvania. However, when in doubt, or when dealing with an out-of-state wholesaler for Surplus Lines placement, it would be prudent to verify that that wholesaler holds a PA Surplus Lines License. A word of caution: some Surplus Lines wholesalers that have offices in various states have sometimes omitted to license their branch office in Pennsylvania. This is putting them at risk from an enforcement standpoint and you as well, for using their services. You can always check with the Insurance Department’s Bureau of Producer Services at 717-787-3840 or 877-336-7479 or by email at [ra-in-producer@pa.gov](mailto:ra-in-producer@pa.gov), or you can simply request a copy of their license. A searchable producer database is now available on the Insurance Department’s website, and enables you to verify instantaneously the wholesaler’s status. Make sure you enter the Surplus Lines license type.

### USEFUL LINKS 3.1

Pennsylvania Insurance Dept.  
Licensee Search  
[apps02.ins.pa.gov/producer/ilist1.asp](https://apps02.ins.pa.gov/producer/ilist1.asp)

### 3.2 What is a courtesy filing and are they permitted in Pennsylvania?

A courtesy filing, as it is often termed, occurs where a producer deals directly with a surplus lines insurer to secure placement but still needs the services of a Surplus Lines Licensee to complete the forms and filing requirements under the law. It is highly recommended that producers *not* engage in this activity since the requirements of the Surplus Lines Law need to be strictly followed. The question for any producer to answer in dealing with the surplus lines market is that all requirements of the law are met.

### 3.3 What exactly is the “diligent search”?

In order to place business through the Surplus Lines market, you must be able to show that you have been unable to place the risk with admitted carriers. It is mandatory for you to present the risk to three different admitted insurers writing coverage comparable to the coverage being sought, and to have a denial from each of them.

As the producer, you are required to fill out the form 1609-PR . Effective 01/01/2013, 1609-PR no longer lists the three carriers declining the risks on the form itself, but those three carriers must still be identified in the agency file.

The 1609-PR is not necessary:

- ▲ if the risk is on the export list (see questions 3.15), or
- ▲ if the risk has been continuously insured through a Surplus Lines insurer for at least three consecutive years preceding the current placement. However, the Surplus Lines Licensee will have to submit a different type of filing 1609-B.

### 3.4 Are there any exemptions from the diligent search?

Yes, there are certain limited instances when it is not necessary.

#### A. Export list

As mentioned above, if a risk is on the [export list](#), or once coverage has been placed with an eligible surplus lines insurer for at least *three consecutive years immediately preceding the current placement*, you are not required to provide the three declinations (see questions # 3.13 & 3.14).

#### B. Exempt Commercial Purchaser

The diligent search is also not required for certain large accounts meeting the definition of “exempt commercial purchaser” IF:

- ▲ The Surplus Lines Licensee disclosed to the exempt commercial purchaser that the insurance may be available from the admitted market with greater protection and regulatory oversight, AND
- ▲ The exempt commercial purchaser subsequently requested in writing that the risk be placed with the non-admitted insurer (see Question 3.5).

#### C. Risk Purchasing Groups / Risk Retention Groups

The diligent search requirement is also waived for members of a purchasing group or a risk retention group if certain conditions are met (see section 991.1610 of the law).

#### D. Unique form of coverage

Finally, an insured who requires a “unique form of coverage not available in the admitted market” is not required to comply with the diligent search. However, nothing defines, nor are there any interpretations that we are aware of, that would help clarify what this “unique form of coverage” entails. The fact that a risk is difficult to place *does not mean* that it requires a “unique form of coverage not available in the admitted market.” It is based on each individual account analysis, calls for a rational and professional approach to substantiate it, and involves disclosing all necessary information to the client. No producer should rely on this

#### USEFUL LINKS 3.3

PA Surplus Lines Association  
Electronic Filing Forms  
[pasla.org/efs\\_forms.htm](https://pasla.org/efs_forms.htm)

PA Surplus Lines Association  
Filing Types  
[pasla.org/efs\\_filingtypes.htm](https://pasla.org/efs_filingtypes.htm)

PA Insurance Dept Bulletin:  
[50 Pa.B. 3805] Export List  
[pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-28/951.html](https://pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-28/951.html)



exemption without serious thought to their due diligence process and without being reasonably certain that they are entitled to use it. Bear in mind that this exception should never be used to avoid the diligent search.

For all these exemptions, the reporting requirements are slightly different. However, if none of these exemptions apply, the diligent search affidavit must be completed.

### 3.5 What is an “exempt commercial purchaser”?

To qualify as “exempt commercial purchaser,” the client must be purchasing commercial insurance AND, at the time of placement, must:

- A. employ or retain a “qualified risk manager” to negotiate insurance,
- B. have paid total nationwide commercial P&C premiums in excess of \$100,000 in the preceding 12 months,
- C. meet at least one of the following criteria:
  - ▲ possess a net worth in excess of \$20,000,000, as adjusted\*, (\$23,781,160 effective 01/01/2020),
  - ▲ generate annual revenues in excess of \$50,000,000, as adjusted\*, (\$59,452,900 effective 01/01/2020),
  - ▲ employ more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees
  - ▲ be a not-for-profit organization or public entity generating annual budget expenditures of at least \$30,000,000, as adjusted\*, (\$35,671,740 effective 01/01/2020), OR
  - ▲ be a municipality with a population in excess of 50,000 persons.

\* The adjustment will be calculated every five years, starting Jan. 1, 2015, and will be based, for that period, on the percentage change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor and Industry.

### 3.6 How do I know if their risk manager is a “qualified risk manager”?

An individual meeting the following criteria would qualify:

- A. A person who is an employee of, or third-party consultant retained by, the commercial policyholder;
- B. The person provides skilled services in loss prevention, loss reduction or risk and insurance coverage analysis and purchase of insurance;
- C. The person:
  - 1a. has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

1b. has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis or purchasing commercial lines of insurance; or II) has a CPCU, CRM or RIMS Fellow designation (or another designation if so determined by the Insurance Commissioner)

2a. has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis or purchasing commercial lines of insurance; and

2b. has a CPCU, CRM or RIMS Fellow designation (or another designation if so determined by the Insurance Commissioner)

3. has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis or purchasing commercial lines of insurance; OR

4. has a graduate degree from an accredited college or university in risk management, business administration, finance, economics or any other field determined by the commissioner to demonstrate minimum competence in risk management.

### 3.7 What if I don't have three because my carriers will not even look at the risk?

Even if you can't find a carrier 'writing coverage comparable to the coverage being sought,' you must still secure three declinations.

With the amended regulation adopted in Sep. 2013, we were able to score a major victory for producers: *The regulation finally recognizes that underwriting guidelines can be used as a basis for declination.* Under sect. 124.5, a producer can use a carrier as long as that producer properly documents his file. Simply make sure that the written record includes:

- ▲ the name of the insurer, and
- ▲ reference to the underwriting guidelines upon which the declination is based.

### 3.8 What if I don't represent three companies for the diligent search?

The number of carriers with whom you have appointments is of no consequence on your obligation to secure three denials. As a rule, you should follow the same logic as in Question 3.5. The Insurance Department is interested in knowing that the standard market would not write the risk, not whether you have an appointment with that market or not. Besides, as an insurance producer, you can either act as an "agent" or as a "broker," which can give you access to more markets. Again, no matter how many companies you represent, ***DO NOT submit the affidavit without having secured THREE declinations.***

### 3.9 What if I ask my wholesaler if they have a standard market to complete the diligent search?

It is not uncommon for a producer to first go to a wholesaler to find a market and for them to tell you that the only way to go is the Surplus Lines market. From an enforcement standpoint, however, you, as the producer, should not rely on denials by wholesalers based on the wholesaler's knowledge that the risk cannot be placed in the standard market. Bear in mind that three denials must be secured, and they must always come from insurers.

What you can do, however, is use another broker or the wholesaler's submission of the risk to an insurer as a declination. This is a pragmatic, middle-ground approach that addresses both the Department's concern for regulatory compliance and the reality of market availability and practice.

When your wholesaler indicates the need to go to the surplus lines market based on a denial(s) they received, ask them to *forward to you the company's direct denial*, preferably in writing (e-mail, fax, or copy) for your files. If not in writing, follow the same steps as in Question 3.9 for purposes of proper documentation of a verbal declination. That direct confirmation of the refusal from the insurance company would then allow you to document the insurance company's name for purposes of the diligent search.

### **3.10 Can I use two companies belonging to the same group?**

The Surplus Lines regulations state that you may NOT use two companies which are affiliated with each other (in the same company group) – BUT...

It is not prohibited if, **AND ONLY IF**, the affiliated insurers write independently of each other, with independently-developed underwriting criteria and marketing plans, and compete for the same types of insurance.

### **3.11 Must I have the companies' denials in writing?**

It is not mandatory for you to get the answer in writing. However, if the denial is verbal, you will need to record it very precisely indicating:

- ▲ the name, office location and phone number of the admitted insurer or underwriting manager contacted;
- ▲ the name & position of the person contacted;
- ▲ the date of contact;
- ▲ an explanation of the declination.

### **3.12 What if the company does not respond or is too slow in responding?**

The regulation allows you to assume that the insurer has declined to write the risk if you have not received an answer within 5 business days after contacting them.

### **3.13 What happens if an affidavit is questioned?**

As already mentioned, the affidavit is an oath that you have secured three declinations from admitted carriers. It is important to understand that the fact that the three carriers are no longer listed on the 1609-PR does not remove the requirement to secure the declinations. Consequently, properly documenting such declinations is key.

If the affidavit is questioned, this will likely trigger an inquiry from the Insurance Department and a request to access your file. Should the validity of the producer's diligent search effort come into question, each submission would be reviewed on a case-by-case basis. You should use a reasoned basis in your placement process and document everything relative to that process.

### 3.14 If I know I can provide more extensive coverage or better terms through a Surplus Lines carrier but I have an admitted market that will take the risk, what should or can I do?

Generally speaking, when you have an admitted market offer, that is the option you should offer, period. However, there are a couple of areas of limited “flexibility:”

- remember that there are certain circumstances when you don’t need to look for three declinations before placing a risk in the Surplus Lines market (see question # 3.4).

- if you cannot secure the full amount or kind of insurance the insured is looking for, if the admitted market option is lacking an important piece of coverage that the insured requested, this discrepancy may be a legitimate reason to present both the admitted and non-admitted offers. However, the agency should keep clear documentation of the specific coverage request/coverage discrepancy and should take additional precautions including:

- ▲ ▲ researching the insurer’s financial rating and sharing your findings with the customer;
- ▲ ▲ making sure that the client is given all the options and makes a fully informed decision (this includes no Guaranty Fund coverage); and
- ▲ ▲ documenting everything, from the coverage comparison to the client information

and decision. It would probably be prudent to have the customer sign off on the information you provided and the fact that he/she chose to go to the E&S market.

With such precautionary measures, you may have better standing in case of a regulatory inquiry.

#### USEFUL LINKS 3.15

PA Surplus Lines Association  
Filing Types  
[pasla.org/efs\\_filingtypes.htm](https://pasla.org/efs_filingtypes.htm)

PA Insurance Dept Bulletin:  
[50 Pa.B. 3805] Export List  
[pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-28/951.html](https://pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-28/951.html)

#### APPENDIX

Current bulletin in appendix

### 3.15 What is the export list?

The export list is a list of types of risks which are considered in and by themselves hard enough to place that the diligent search is not required. Currently, it includes such risks as amusement parks, daycare centers with sexual molestation liability, vacant properties, etc. While the 1609-PR affidavit is not required, the PSLA requests surplus lines licensees to file form 1604-E when the risk qualifies for the export list.

## 4.0 FEES & TAXES

### 4.1 What is the stamping fee? How much is it?

The stamping fee is a fee charged by the Pennsylvania Surplus Lines Association (PSLA) for processing the affidavits and other filed documents related to surplus lines. Effective Jan. 1, 2008, the stamping fee is a flat, non-refundable, annual fee as follows:

- ▲ Stamping fees for filings received within 45 days of the effective date of the

placement will carry a stamping fee of \$25.00 per filing. The fee is payable by the insured and remitted by the surplus lines licensee to PSLA.

- ▲ Stamping fees for filings received after 45 days of the effective date of the placement (as specified by the Surplus Lines Law) carries a stamping fee of \$50.00 per filing. Twenty-five dollars (\$25.00) of the fee is to be payable by the insured with the remaining \$25.00 payable by the surplus lines licensee. The entire fee is to be remitted by the surplus lines licensee to PSLA.

#### 4.2 Are there any exemptions from the stamping fee?

No. There are no exemptions.

#### 4.3 How much is the Surplus Lines tax?

The Surplus Lines Tax is 3% of taxable gross premiums less return premiums.

For multi-state risks written after June 30, 2011, the entire tax is collected if Pennsylvania is the home state of the insured. To determine the home state, see section “Multi-state Risks.”

Note: The allocation method among the different states has not yet been determined. Further legal and regulatory developments are in the works to define the proper method.

#### USEFUL LINKS 4.4

PA Dept of Revenue  
[revenue.pa.gov/](https://revenue.pa.gov/)

#### 4.4 Are there any exemptions from the Surplus Lines Tax?

Certain types of businesses had been exempted from the tax by the PA Department of Revenue. Usually they involved political subdivisions or unincorporated charitable, religious or educational organizations. However, the Department of Revenue has made changes to its determination process and has indicated that unincorporated charitable, religious or educational organizations are no longer exempt. Other operations may be affected as well. In doubt, you should contact the PA Department of Revenue and ask them for a determination of exemption for your particular filing. As a matter of policy, it would be wise to request a response in writing.

#### 4.5 I have a surplus lines account that has canceled mid-term. The Surplus lines licensee states that it will refund the unearned premium, but can't reimburse the premium tax refund until the following year. How should this actually work?

Under the Surplus Lines law, the 3% premium tax is collected by the surplus lines licensee. The law then requires the Surplus Lines licensee to file with the Department of Revenue on or before January 31 of each year the taxes owed along with policyholder information. This report is for the just-completed calendar year (as of 12/31). It is iterated that this is the Surplus Lines Licensee's responsibility, not the non-admitted carrier's.

The Department of Revenue states on its instructions (RCT-123) that the tax is based

upon the gross premium charge less any return premium. The tax on any unearned portion of the premium must be returned to the insured.

If the tax has not been remitted to the state yet, then the surplus lines licensee is currently holding the premium tax for remittance to the state. They should recalculate the tax based upon the earned premium, and return the difference to the insured. If the tax has already been remitted, the general position of the Insurance Department and of the Department of Revenue would be to review each case as fact specific.

#### USEFUL LINKS 5.0

IA&B White Papers on Policy Non-Renewals/Cancellations

[www.iabforme.com/  
member-resources/agency-  
management/carrier-  
resources/](http://www.iabforme.com/member-resources/agency-management/carrier-resources/)

## 5.0 NONRENEWAL / CANCELLATION OF POLICIES

### 5.1 A Surplus Lines insurer writing one of my commercial accounts nonrenewed without sending a 60-day advance notice. They are stating that Act 86 does not apply. Are they right?

No. Act 86, which governs nonrenewal and cancellation of commercial lines policies, applies to Surplus Lines carriers. Not only do they have to comply with the 60-day advance notice but with everything else in the Act. For more, you can consult IA&B's white paper on Policy Nonrenewals & Cancellations.

### 5.2 What about a homeowner's policy: does a Surplus Lines carrier have to comply with the cancellation statute that applies to admitted carriers?

Absolutely. Surplus Lines carriers are regulated by nonrenewal & cancellation statutes, in this instance Act 205. They have to comply with all the conditions stated in the Act. For more, you can consult IA&B's white paper on Policy Nonrenewals & Cancellations.

## 6.0 MULTI-STATE RISKS

### 6.1 When an insured has risks in various states, how is the "home state" determined?

The home state is defined by law under section 1602:

If a single insured:

A. The state in which the insured maintains its principal place of business or, if an individual, his or her principal residence; or

B. if 100% of the insured risk is located out of the state determined under (1), the

state to which the greatest percentage of the insured's taxable premium for the insurance contract is allocated,

If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the state of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

*The home state of the insured is not to be confused with the producer or Surplus Lines Licensee's home state under the licensing statute.*

## 7.0 EASY “MISTAKES” TO AVOID

- ▲ Never secure only one or 2 carrier declinations when the diligent search requires 3 (the number of carriers with whom you have appointments is of no influence on this. You MUST document 3 insurers)
- ▲ Never have an unlicensed staff sign the affidavit
- ▲ Do not forget the export list
- ▲ Never work with a Surplus Line Licensee who is not licensed in PA
- ▲ Make sure the premium tax is properly filed
- ▲ Avoid “courtesy filings”
- ▲ If you are licensed as a Surplus Lines Licensee (individual), make sure your business entity is licensed as well

# SURPLUS LINES E&O CONSIDERATIONS

The Frequently Asked Questions focus on regulatory compliance with Surplus Lines placements. Other important considerations should be taken into account to mitigate E&O risks associated with such placements. These include the following.

## **Issue 1: Binding Authority**

The first issue to remember is that you do not have an appointment with these carriers, thus you have no binding authority. What does that mean? Well, for instance, in order to bind the coverage, you must seek the written authorization from the broker who has the appointment.

Do not indicate to your customer, in any way, that they have coverage until you have it in writing from the broker. Saying “Don’t worry, we’ll replace your coverage” may get you into E&O trouble. It is best to say “We are searching other markets to replace your coverage and will advise you when and if we find that coverage and what the new terms will be.”

Get started early and keep your customer informed of your progress, or inability if that’s the case, to replace the coverage. Watch your expiration dates. Never let that expiration date go past without contacting the insured and having a binder in hand or written acknowledgement that coverage has been placed elsewhere. Never let your insured assume you have “handled” the replacement of their policy.

## **Issue 2: Coverages**

The second issue to remember is that the coverages you ask for on an application may not be the same coverages that you receive a proposal for from the broker. For instance, let’s say that you provide coverage on a building that is being non-renewed and must be placed in the Surplus Lines market. Currently, you provide Building, Contents, and Actual Loss Sustained Business Income with Special Form Perils coverages, Agreed Value clause, as well as Equipment Breakdown (the old “boiler & machinery” coverage). The Surplus Lines carrier may only provide Named Perils coverage with a co-insurance clause. The Business Income coverage may have a co-insurance clause or a quarterly or monthly limitation, or perhaps Business Income is excluded all together. They rarely provide Equipment Breakdown coverage.

## **How will you know what to present to your insured?**

You must read the proposal offered by the Surplus Lines broker very carefully. If the coverage isn’t spelled out by the broker, request it. Be sure to review carefully any attached endorsements proposed. If coverage form numbers appear on the proposal but the forms are not attached, ask for them. If you are unsure what they mean once you have read them, ask the broker to explain. Then get it in writing. If it still isn’t clear, ask your business associates or your local agency association for help.

Once you understand the coverage offered by the broker, prepare the proposal for your customer and explain what is being presented and how it differs from the coverage they had previously. If they choose to accept the proposal, get their signature of acceptance.

## **APPENDIX**

This white paper includes two sample letters, one for new and one for renewal business to help notify customers.



### **Issue 3: Non-Admitted Carriers**

The third issue to remember is that these carriers are usually non-admitted. What does that mean? It means that they do not have direct approval by the Bureau of Insurance in your state and that the company itself is not provided coverage by the State Guarantee Fund. Their financial condition to pay a claim is not protected.

You must watch the financial rating of the carrier you will present to your insured. Many states require written declinations from three standard carriers before coverage can be placed with a non-admitted carrier. They often require your insured's signature that he or she is aware that the coverage is being placed with a non-admitted carrier before you can have coverage bound.

### **Issue 4: Taxes and Fees**

A fourth issue is that these policies will require a Surplus Lines tax, local or municipal tax and usually a "policy fee" by the broker. Often these fees are not refundable upon cancellation of the policy. Also, most policies will contain a minimum-earned clause in which 25 percent, or the entire premium, is considered fully earned the moment coverage is bound with them. Your insured needs to understand these conditions before binding.

### **Issue 5: Premium**

A fifth issue related to premium is that these carriers require payment in full. Since this is the surplus lines market, they do not offer payment plans. Should your insured not be in a position to pay the entire premium, taxes and fees up front, you may need to obtain premium financing through a financing company.

Premium financing has issues of its own that we cannot cover in this article. Watch for future columns that will discuss the perils of premium financing. In the meantime, be prepared that when the market turns and you need to place some business in the Excess Lines market, a little forethought on your part can prevent excess headaches.

*This information was excerpted from an article by Utica National Insurance Group, which specializes in agents' E&O coverage. IA&B is the exclusive agent for the Utica E&O product in Pennsylvania, Maryland, and Delaware.*

**NOTICES  
INSURANCE DEPARTMENT**

**Insurance Coverages or Risks Eligible for Export by Insurance Commissioner**

[53 Pa.B. 3805]  
[Saturday, July 15, 2023]

Under section 1604(2)(ii) of The Insurance Company Law of 1921 (40 P.S. § 991.1604(2)(ii)), the Insurance Commissioner declares the following insurance coverages to be generally unavailable in the authorized market at the present, and thus exportable, and adopts the following export list. Accordingly, for those insurance coverages which are included on the export list, a diligent search among insurers admitted to do business in this Commonwealth is not required before placement of the coverages in the surplus lines market.

**EXPORT LIST**

Active Assailant Coverage

Amusements

- Amusement Parks and their Devices
- Animal Rides
- Recreational and Sporting Events
- Special Short Term Events
- Theatrical Presentations

Aviation

- Fixed Base Operations

Bridge and Tunnel Contractors (liability only)

Chemical Spray and/or Drift

Commercial Cyber Insurance (inclusive of first party and/or third party commercial cyber insurance coverage)

Crane and Rigging Contractors (liability and physical damage only)

Crop Dusters (aircraft liability and aircraft hull coverage only)

Day Care Centers, including Sexual Abuse Coverage

Demolition Contractors Liability

Disability Insurance—Excess

Dog Bite Liability (monoline)

Firework Sales/Manufacturing

Flood Insurance

Fuel and Explosive Haulers (excess auto liability and auto physical damage only)

Guides and Outfitters (liability only)

Hazardous Waste Haulers (excess auto liability and auto physical damage only)

Hazardous Waste Storage and Disposal (liability only)

Homeshare Business Multi-Peril Insurance (on-demand short-term)

Hunting Clubs

Kidnapping, Ransom and Extortion Insurance

**APPENDIX**

This list is current as of July 15, 2023.

For the most up-to-date export list, go to:

Pennsylvania Code and Bulletin Search

[pacodeandbulletin.gov](http://pacodeandbulletin.gov)

Liquor Liability (monoline)

Medical Malpractice Liability with or without related General Liability Coverages

Medicinal Cannabis Cultivation, Processing/Harvesting, Manufacturing, Testing, Transportation/Delivery, Retail Distribution and/or Lessors/Property Managers

Miscellaneous Errors and Omissions or Professional Liability except architects and engineers, medical malpractice, lawyers, personnel agencies, travel agents, real estate brokers and insurance agents and brokers

Nightclubs

Nursing Home Liability with or without other Affiliated Elder Care Services

Paint and Coating Manufacturers—Liability

Pest Control (Exterminators) Liability

Pollution Liability and/or Environmental Impairment Coverage

Products Liability (monoline) for the Manufacturing of:

- Aircraft and Component Parts
- Automotive and Component Parts
- Farm and Industrial Equipment
- Firearms
- Medical Equipment
- Petrochemicals
- Pharmaceuticals

Products Recall (monoline) for the Manufacturing of:

- Aircraft and Component Parts
- Automotive and Component Parts
- Farm and Industrial Equipment
- Firearms
- Medical Equipment
- Petrochemicals
- Pharmaceuticals

Railroad, including Consultants, Contractors and Suppliers

Real-Estate Environmental Impairment Coverage

Scrap Metal Dealers/Recycling Centers with Off-Site Disassembling (general liability only)

Security/Detective/Patrol Agencies

Tattoo Parlors

Taxicab Liability

Title Insurance Agents Errors and Omissions

Vacant Properties (excluding 1—4 family unit residential dwellings and individually owned residential units in larger residential buildings)

Wire Transfer Fraud Coverage for Title Agents with or without Other Cybersecurity Coverage

This list becomes effective on the date of its publication in the Pennsylvania Bulletin [July 15, 2023] and supersedes the list published at 52 Pa.B. 2194 (April 9, 2022), and shall remain in effect until superseded by a subsequent list as published in the Pennsylvania Bulletin.

This list is current as of July 15, 2023.

For the most up-to-date export list, go to:

Pennsylvania Code and Bulletin Search

[pacodeandbulletin.gov](https://www.pacodeandbulletin.gov)

# SAMPLE LETTER FOR RENEWAL BUSINESS REPLACED IN SL MARKET

## APPENDIX

A Word version of this letter is available at [www.iabforme.com/member-resources/legal-compliance/surplus-lines/](http://www.iabforme.com/member-resources/legal-compliance/surplus-lines/)

[Insert date]

[Client name]

[Street address]

[City]

[State, Zip code]

Re: [insert type of insurance] policy

Dear [Client name],

In seeking replacement coverage for your insurance policy, which is scheduled to renew on ../../20XX, at least three “admitted” insurance companies declined to make an offer. We were, however, able to secure an offer [several offers] from a “non-admitted” company.

A “non-admitted” company (also referred to as a “surplus lines” carrier) is an insurance company that:

- is eligible to place surplus lines insurance, but not licensed in the state,
- is subject to limited regulatory authority from the state’s Insurance Department, and
- is not protected by the state Guaranty Fund (a fund designed to protect policyholders from insurance company insolvency). Consequently, if your insurance is placed with a non-admitted company that becomes insolvent, you cannot ask the Fund to compensate you for your loss.

While many non-admitted companies are financially stable, we must inform you of the possibility that if the non-admitted company were to become insolvent for any reason, including bankruptcy, and be unable to meet its financial obligations, you may not be able to collect on your insurance policy.

Please let us know as soon as possible if you would like to pursue placement in the non-admitted market. If we do not hear from you promptly [or by ../../20XX], we will be unable to secure coverage, in which case your insurance will cease on ../../20XX, with no substitute coverage in place through our agency.

Please do not hesitate to contact our office if you have any questions on the above. We regret any inconvenience this may cause, and await your prompt instructions.

Sincerely,

[Signature]

# SAMPLE LETTER FOR NEW BUSINESS PLACED IN THE SL MARKET

A Word version of this letter is available at [www.iabforme.com/member-resources/legal-compliance/surplus-lines/](http://www.iabforme.com/member-resources/legal-compliance/surplus-lines/)

[Insert date]

[Client name]

[Street address]

[City]

[State, Zip code]

Re: [insert type of insurance] policy

Dear [Client name],

In seeking coverage for the above-reference insurance policy, at least three “admitted” insurance companies declined to make an offer. We were, however, able to secure an offer [several offers] from a “non-admitted” company.

A “non-admitted” company (also referred to as a “surplus lines” carrier) is an insurance company that:

- is eligible to place surplus lines insurance, but not licensed in the state,
- is subject to limited regulatory authority from the state’s Insurance Department, and
- is not protected by the state Guaranty Fund (a fund designed to protect policyholders from insurance company insolvency). Consequently, if your insurance is placed with a non-admitted company that becomes insolvent, you cannot ask the Fund to compensate you for your loss.

While many non-admitted companies are financially stable, we must inform you of the possibility that if the non-admitted company were to become insolvent for any reason, including bankruptcy, and be unable to meet its financial obligations, you may not be able to collect on your insurance policy.

Please let us know as soon as possible if you would like to pursue placement in the non-admitted market. If we do not hear from you promptly [or by .././20XX], we will be unable to secure coverage, in which case your current insurance will cease on .././20XX, with no substitute coverage in place through our agency.

Please do not hesitate to contact our office if you have any questions on the above.

Sincerely,

[Signature]