



## National Association of Professional Surplus Lines Offices, Ltd.

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Richard M. Bouhan  
Executive Director

March 22, 2010

Mr. John W. Bauer  
Chief Counsel, Regulatory Affairs  
National Association of Insurance Commissioners  
2301 McGee Street, Suite 800  
Kansas City, MO 64108

### **RE: Kansas NARAB Questionnaire**

Dear Mr. Bauer:

NAPSLO would like to comment about the Kansas survey responses. The survey responses indicate that an underlying P&C license is required as a precondition for obtaining a non-resident excess lines broker's license (Kansas uses the term "excess lines" instead of "surplus lines"). We would argue that KSA 40-4906 provides that a non-resident P&C license is not required for a non-resident surplus lines license in Kansas. It specifically provides that a license can be obtained if the criteria in Graham Leach Bliley were complied with:

(d) Subject to the provisions of subsection (a), any person licensed as a surplus lines agent in such person's home state shall receive a nonresident surplus lines agent license. Except as provided in subsection (a), nothing in this section shall be construed to amend or supersede any provision of K.S.A. 40-246b and amendments thereto.

Subsection (a) is the criteria in GLBA and it allows a non-resident license to be issued if the non resident is: 1) licensed and in good standing in the home state; 2) submitted the request for license; 3) submitted a copy of the application; and 4) the home state allows a resident license. We believe Kansas law allows a non-resident surplus lines license without a Kansas P&C license and below is the entire statute.

### **Chapter 40.--INSURANCE**

#### **Article 49.--UNIFORM INSURANCE AGENTS LICENSING ACT**

**40-4906. Same; nonresident agent license; requirements.** (a) Unless denied licensure pursuant to K.S.A. 2009 Supp. 40-4909, and amendments thereto, a nonresident person shall receive a nonresident agent license if:

(1) Such person is currently licensed as a resident and in good standing in such person's home state;

(2) Such person has submitted the proper request for licensure and has paid to the commissioner a nonrefundable application fee of \$30 and a biennial fee of \$50;

(3) such person has submitted or transmitted to the commissioner of insurance a copy of the application for licensure that such person submitted to such person's home state, or in lieu of the same, a completed application on a form prescribed by the commissioner; and

(4) Such person's home state awards a nonresident agent license to residents of this state on the same basis.

(b) The commissioner may verify the insurance agent's licensing status through the producer database maintained by the NAIC, its affiliates or subsidiaries.

(c) (1) Any nonresident agent who is licensed in this state and who moves from one state to another state or a resident agent who moves from this state to another state shall file with the commissioner within 30 days a change of address and provide certification from the new resident state.

(2) Any insurance agent who resides in this state and who moves from this state to another state shall file with the commissioner within 30 days a change of address and provide certification from the new resident state.

(3) No fee or license application shall be required for any filing required by this subsection.

(d) Subject to the provisions of subsection (a), any person licensed as a surplus lines agent in such person's home state shall receive a nonresident surplus lines agent license. Except as provided in subsection (a), nothing in this section shall be construed to amend or supersede any provision of K.S.A. 40-246b and amendments thereto.

(e) Subject to the provisions of subsection (a), any person licensed as a limited line credit insurance or other type of limited lines agent in such person's home state shall receive a nonresident limited lines agent license in this state granting the same scope of authority as granted under the license issued by the such insurance agent's home state.

**History:** L. 2001, ch. 91, § 6; July 1.

The legislature intended to directly address the Graham Leach Bliley requirements by indicating that a non-resident surplus lines broker can obtain a license by compliance with section 4906. It does not require an underlying P&C license from Kansas. We believe section 4906 should have resulted in the Kansas response 4.a being that a non-resident surplus lines broker is not required to have an underlying P&C license. We believe the legislature clearly made a policy decision in favor of the reciprocal licensing requirements of Graham Leach Bliley.

We do not believe it is necessary to discuss the diligent search because Kansas allows a non-resident surplus lines license without a Kansas P&C license. Nevertheless, we believe the Kansas legislature was fully aware that some portion of the surplus lines market utilizes the wholesale production system whereby the surplus lines broker acts as an intermediary between the retail agent (typically and independent agent) and the

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surplus lines insurer. The retail agent conducts the diligent search in the wholesale production system. Kansas intended to address the wholesale production system in 40-246b where it outlined the requirements for placing surplus lines insurance:

*“When business comes to a licensed excess lines agent for placement with an insurer not authorized to do business in this state from an agent not licensed as an excess lines agent, it shall be the responsibility of the licensed excess lines agent to ascertain that the insured has been provided the preceding information and has consented to being insured with an insurer not authorized to do business in this state.”*

If there is some concern that the surplus lines wholesale broker is supposed to be conducting a second diligent search, we would urge Kansas to issue a bulletin clarifying that the surplus lines wholesale broker may reasonably rely upon the diligent search conducted by the retail agent. The retail agent is the expert in the admitted markets. The retail agent would not contact the surplus lines agent if they were able to place the business in the admitted markets since they must split a commission. The surplus lines wholesale broker is an expert in surplus lines markets and it would be absurd to require the surplus lines wholesale broker to conduct a search of the admitted markets, when the retail agent has already concluded there are no admitted markets for the risk.

The surplus lines wholesale broker typically only places business with surplus lines companies and they frequently have no access to admitted markets in order to complete a diligent search. The statutory scheme recognizes the wholesale system exists, but it is not as clearly worded as it could be. The retailer is in the best position to complete the diligent search and does so in all transactions involving a wholesaler. NAPSLO has over 700 surplus lines wholesale brokerage companies that would not perform a diligent search of the admitted markets because the retail agent would have already done so.

We believe it is in the best interest of the states, the NAIC, and NAPSLO to have as many states certified as reciprocal as possible. Great strides have been made in the area of reciprocal licensing. If there is anything NAPSLO can do to further this overall objective, please let me know.

Yours truly,

A handwritten signature in black ink that reads "Steven P. Stephan". The signature is written in a cursive, flowing style.

Steven P. Stephan, J.D., CPCU, ARe  
Director of Government Relations