



National Association of Professional Surplus Lines Offices, Ltd.

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Richard M. Bouhan
Executive Director

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

RE: Wyoming NARAB Questionnaire

Dear Mr. Bauer:

NAPSLO would like to comment about the Wyoming NARAB Working Group Reciprocity Checklist responses. The responses indicate that an underlying non-resident P&C license is required as a precondition for obtaining a non-resident surplus lines broker's license. We believe the legislature intended to address this issue in Section 26-9-208 where it outlined the requirements for obtaining a non-resident surplus lines license:

§ 26-9-208. Nonresident licensing

- (a) Unless denied licensure pursuant to W.S. 26-9-211, a nonresident person shall receive a nonresident producer license if:
- (i) The person is currently licensed as a resident and is in good standing in his home state;
 - (ii) The person has submitted the proper request for licensure and has paid the fees required by W.S. 26-4-101(a);
 - (iii) The person has submitted or transmitted to the commissioner the application for licensure the person submitted to his home state, or in lieu of the same, a completed uniform application; and
 - (iv) The person's home state awards nonresident producer licenses to residents of this state on the same basis.
- (b) The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.
- (c) A nonresident producer who moves from one (1) state to another or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.
- (d) Notwithstanding any other provision of this chapter, a person licensed as a surplus lines producer in his home state shall receive a nonresident surplus lines producer license pursuant to subsection (a) of this section. Except as to subsection (a) of this section, nothing in this section otherwise amends or supercedes any provision of chapter 11 of this code.

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 (a) of this statute. Section (a) of the statute requires a license in the home state, a request for licensure, and an application. It does not require an underlying non-resident P&C license from Wyoming. We believe Section (d) should have resulted in the Wyoming response to Question 4.a being that a non-resident surplus lines broker is not required to have an underlying non-resident P&C license. Section d provides that "notwithstanding any other provision of this chapter" a person licensed as a surplus lines producer in the persons' home state shall receive a non-resident surplus lines producer's license under Subsection (a). The clear legislative intent was for this provision to control other provisions of the code. The questionnaire mentioned section 26.11-104 but it is specifically controlled by the provisions in Section (d) where it specifically states that it applies "notwithstanding any other provision of this chapter." We believe the legislature intended to address non-resident licensing for surplus lines brokers and that they did not intend to require a non-resident P&C license as a precondition for a non-resident surplus lines license.

We believe the question could have gone further to elucidate the issue. The wholesale surplus lines broker would normally rely upon the diligent search conducted by the retail agent. The retail agent is typically an independent insurance agent and typically does not have a surplus lines broker's license. The retail agent is the expert in the admitted markets. The surplus lines wholesale broker is an intermediary between the retail agent and the surplus lines company. The surplus lines wholesale broker is an expert in surplus lines markets and would have little or no contacts in the admitted markets.

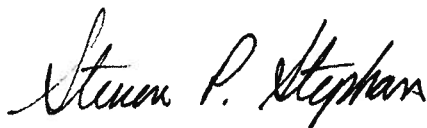
There is a second production model where the retail surplus lines brokers directly access the surplus lines markets without a wholesaler. Retail surplus lines brokers would conduct a diligent search of the admitted markets. They are the only broker in the transaction and the only broker who could conduct the diligent search. A retail surplus lines broker would need both a P&C license and a surplus lines broker's license. Wyoming's response to question 4(c) addresses the possibility of a retail broker conducting a diligent search.

Many states require the surplus lines broker to execute the affidavit even if the diligent search was conducted by a retail broker. Some states also require the retail broker to execute an affidavit regarding the diligent search. The Wyoming affidavit must be executed by the surplus lines licensee, like other states, but does not specifically prohibit the surplus lines wholesale broker from relying upon the diligent search already conducted by the retail producer.

The question could have been more specific in distinguishing the requirements for a retail surplus lines broker and a wholesale surplus lines broker. We believe the answers to the question 4 are accurate in the context of a surplus lines retail broker because a retail surplus lines broker must conduct a diligent search. A non-resident retail surplus lines broker would need an underlying P&C license in order to conduct a diligent search. We believe that a non-resident wholesale surplus lines broker would not need an underlying P&C license because the diligent search was already conducted by the retail producer.

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 and in this would be one more step in the direction 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 cursive script that reads "Steven P. Stephan".

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