

DATE: April 8, 2010  
TO: All Surplus Lines Agencies  
FROM: Kenneth A. Rudert, Executive Director  
SUBJECT: Who is Responsible for the Filing?

During the last several years, due to several new developments coming into existence all at the same time causing a confluence of confusion, there seems to be misunderstanding as to who is responsible for the completion and filing of the affidavit(s) that make up a surplus lines filing. Surplus lines filings require 1) a producer who represents the insured AND 2) a surplus lines licensee who is empowered to enter the non-admitted, surplus lines market. This can be two different parties or one party functioning as both licensees. NOTHING HAS CHANGED, the party who represents the insured is still responsible for the Producer Affidavit, and the party who negotiated and bound the placement in the surplus lines market is still responsible for the Surplus Lines Affidavit. Operating in the surplus lines market differs from the standard or admitted market where the producer represents both the insured and is also empowered to enter the ADMITTED or LICENSED marketplace. The difference is the Surplus Lines Law and its Regulations shifts responsibility from that of the carrier (which is non-admitted) to the licensee. What is required is an electronic filing for each placement made, a monthly report stating all surplus lines transactions during the month, and an annual surplus lines premium tax report to the Department of Revenue at the end of each calendar year with a copy submitted electronically to PSLA.

Therefore, it is important that ALL licensees (both producers and surplus lines licensees) be well informed of the function or role that they perform in a surplus lines transaction. For example, a producer who also holds a valid surplus lines license is able to represent the insured as the producer, and as the surplus lines licensee, is also empowered to negotiate the placement in the surplus lines market WHEN ACCESSING THE SURPLUS LINES MARKET DIRECT. In this case, the agency is responsible for the completion of both the surplus lines affidavit, as well as the producer affidavit which make up the complete filing. On the other hand, a producer with the same surplus lines license who accesses the surplus lines market utilizing the services of a surplus lines licensee wholesaler is functioning ONLY AS THE PRODUCER, representing the insured. In this case, the producer is only responsible for the producer affidavit, which is forwarded to the surplus lines licensee wholesaler, who in turn, is responsible for the surplus lines affidavit and upon collecting the producer affidavit from the producer, submits the complete filing (both affidavits) to PSLA. Please refer to [Section 1609 of the Surplus Lines Law](#).

There is a relatively easy guide as to who should complete which affidavit.

- A. Establish who the surplus lines licensee is who placed the coverage with the carrier on the risk. This is the licensee who is responsible for remitting the net premium to the carrier and the 3% surplus lines tax (calculated on the gross premium) to the Pennsylvania Department of Revenue. This is the party responsible for the surplus lines affidavit and making the COMPLETE FILING with PSLA.
- B. Establish who the producer licensee is representing the insured in the transaction. This is the licensee who is responsible for collecting the gross premium from the insured including the 3% surplus lines premium tax and for the completion of the Producer Affidavit.

If the same party is functioning as both licensees then that party is responsible for both affidavits. What should not happen is two filings made for the same placement. IMPORTANT TO REMEMBER: THE ONLY PERSON WHO CAN COMPLETE AN AFFIDAVIT DECLARING COMPLIANCE IS THE PERSON WHO ACTUALLY DOES IT.

KAR/ds