



SURPLUS LINES BULLETIN NO. 13

TO: ALL SURPLUS LINES LICENSEES AND INTERESTED PARTIES

RE: FORM SL-1923 NOTARY SIGNATURE REQUIREMENT

DATED: June 30, 2014

PURPOSE

The purpose of this bulletin is to address questions that have arisen regarding changes made to the current Statement of Diligent Effort form SL-1923 (formerly SL-1904).

BACKGROUND

Delaware law specifies that each surplus line broker is responsible for ensuring that before procurement of insurance for a home state insured from a nonadmitted insurer, a diligent effort has been made to obtain the insurance from among insurers that are admitted to transact and are actually writing that particular type of insurance in this State. This diligent search may only be performed by a surplus lines broker or active property and casualty insurance producer licensed in this State. Declinations from admitted insurers serve as confirmation of the diligent effort. The Statement of Diligent Effort form reports the results of the diligent search, and is retained in the procuring surplus lines broker's records as part of the policy documents.

When the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) went into effect, and the Delaware Nonadmitted Insurance Act became law in 2011, it became necessary for the Delaware Department of Insurance to update and change surplus lines broker reporting forms, including the Statement of Diligent Effort.

According to 18 **Del. C.** §1923, each surplus lines broker must keep in his or her office a full and true record of each surplus lines coverage procured by him or her for a home state insured. The records must include, "(14) *An affidavit on a form prescribed by the Commissioner as to the diligent effort to place the coverage with admitted insurers as set forth in § 1912 of this title and the results of that effort...*" The Statement of Diligent Effort form is designed to fulfill this requirement.

When the SL-1904 form was updated, not only were the form number and section references changed to correspond to the revised Chapter 19, as with other forms, but it was also

changed to incorporate the wording in §1923 (14) that affirms that prior to placement of the insurance the insured was expressly advised in writing that:

- “a. The surplus lines insurer with whom the insurance was to be placed is not licensed in this State and is not subject to the State's supervision; and
- b. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the State Insurance Guaranty Fund.”

Including this specific wording from 18 **Del. C.** §1923 (14) on the form brings another layer of protection to consumers who must be made aware of the Commissioner's limited regulatory authority over surplus lines insurance. Not only is the disclosure statement stamped on the policy, but in compliance with Chapter 19, the insured must also be so informed by the individual conducting the diligent search before the purchase of insurance from a nonadmitted insurer.

The updated SL-1923 form was issued for use in 2012. During 2013 it was brought to the Department's attention that notarization is necessary for a form to be considered an affidavit, but the updated SL-1923 form did not provide for notarization.

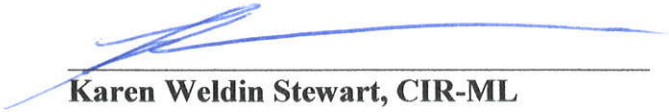
CONCLUSION

The addition of a notary signature allows the SL-1923 form to be considered an official “affidavit” as stipulated in 18 **Del. C.** §1923 (14).

The attestation on the SL-1923 form signifies that the individual that performed the actions described in the form did so in compliance with all of the requirements set forth in Chapter 19, including notifying the insured of the terms in the disclosure statement. Notarization affirms that the person who signs the form is the person who makes the attestation and takes responsibility for the actions.

All surplus lines brokers and active property and casualty insurance producers licensed in this State shall use the updated SL-1923 that provides for notarization to report declinations obtained during performance of a diligent search conducted prior to placing insurance for a Delaware home state insured with a nonadmitted surplus lines insurer. The form shall be signed by the individual who conducted the diligent search and notarized as confirmation of the attestation signature. The signed SL-1923 form, or an accurate facsimile thereof, shall be retained in the records of the surplus lines broker who procures the insurance.

This bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



Karen Weldin Stewart, CIR-ML
Insurance Commissioner