

The E&S Empire Express



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14th Amendment to Regulation 41 – Final Adoption

On October 8, 2014, the Department of Financial Services published the final adopted version of the 14th Amendment to Regulation 41 in the State Register. The 14th Amendment was originally promulgated on an “emergency basis” on July 22, 2011 and readopted several times thereafter in order to implement the provisions of the Non Admitted and Reinsurance Reform Act of 2010 (NRRRA) and the New York legislation conforming New York law to the NRRRA.

Following is a summary of the revised provisions included in the final adopted version of the 14th Amendment to Regulation 41:

- 1) Neither ELANY nor excess line brokers will be required to obtain:
 - an insurer’s prospective three-year business plan,
 - an executed copy of the insurer’s trust agreement and periodic “funds in trust statement” from the trustee,
 - alien insurer IID Standard Financial Statements.
- 2) Foreign insurers will no longer be required to put up a \$2.5 million trust fund. Such trust funds, which currently exist, may be terminated in accordance with the terms of the trust agreement.
- 3) Service of Process/Consent to Jurisdiction.
 - §27.16 of Regulation 41 is deleted. This removes **but Not From the Insurance Law** requirements regarding consent to service of process and appointing the superintendent as agent for service of process from the regulation. Eligible insurers should note that New York Insurance Law §1213(e) exempts unauthorized insurers from posting collateral or pre-answer security in litigation on risks placed through excess line brokers when the policy designates the superintendent as the lawful attorney upon whom lawful process may be served.
- 4) The following obligations are now directed at insurers, where previously the excess line broker was responsible to verify the insurer’s conduct:
 - The insurer will be directly required to file an electronic EL-1 report on March 15th each year setting forth each New York excess line transaction bound in the prior calendar year,

- Unauthorized insurers will be directly prohibited from selling 1) types of coverage which the excess line law bars excess line brokers from selling, 2) coverages which are not recognized as legal types of insurance in New York, and 3) coverages which are prohibited by public policy,
- Insurers will be directly required to treat payment of premium to the excess line broker as payment to the insurer.

For a more comprehensive review of the final adopted version of the 14th Amendment to Regulation 41 please visit our website www.elany.org and refer to the “Hot News” navigation bar, click on ELANY Bulletins, then click on ELANY Bulletin No. 2014-21.

Stamping Fee Reduction

ELANY is pleased to announce that the Department of Financial Services (DFS) has approved a reduction in the ELANY stamping fee from .20% to **.18%** effective on all excess line policies which incept on or after **July 1, 2015**. This is the third reduction to the ELANY stamping fee since 2004. It should be noted that the excess line premium tax remains at 3.6% on New York taxable premium.



The stamping fee on endorsements will be the same percentage as charged on the original policy filed. Therefore, on policies filed with an inception date on or after July 1, 2015, the stamping fee is .18%. The fee for endorsements on policies incepting July 1, 2005 through June 30, 2015 will remain 0.2%; for endorsements on policies incepting July 1, 2004 through June 30, 2005, the stamping fee is 0.3%; and for endorsements on policies incepting prior to July 1, 2004, the stamping fee is 0.4%

The implementation delay will allow members a time lag to honor outstanding binders and quotes and adjust billing systems and programs for the future change.

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Electronic Stamping Fee Payment Option

Many of our members have requested an alternate means by which to pay their stamping fee invoices. You can now make ACH [Automated Clearing House] payments to ELANY through your bank. All you would need to do is contact your bank to make sure your account is set up to make ACH payments.

If you want to pay your stamping fees by ACH, please contact Nancy Born at nborn@elany.org or Darlene Moreta at dmoreta@elany.org for ELANY's banking information. When setting up ELANY as a vendor for ACH payments, **you must use your member/license number as your account number.** Otherwise, we will have difficulty knowing which broker is entitled to credit.

Fraud Notice Requirement Compliance

ELANY was recently asked if unauthorized insurers are required to comply with the fraud notice requirements contained in Section 403 of the NY Insurance Law (NYIL) and related Regulation 95. The short answer is "Yes". It is the position of the New York State Department of Financial Services (DFS) [OGC opinion number 03-05-02] that unauthorized insurers are required to comply with the fraud notice requirements contained in Section 403 and Regulation 95.

The "Insurance Fraud Prevention Act," cited in Article 4 of the NYIL, was promulgated to aid in the prevention and eradication of insurance fraud in New York State. Section 403 requires that **all** applications for commercial insurance, individual, group or blanket accident and health insurance, automobile insurance and **all** claim forms contain one of the prescribed fraud notices/warning statements contained in said section. The DFS opinion informs that there is no exception in Section 403 for applications and claim forms of unauthorized insurers.

The opinion also states that Section 86.4 of Regulation 95 adds further clarification, since this section of the Regulation provides that **all** applications and claim forms provided to applicants that are delivered to any person residing or located in New York in connection with insurance policies to be **issued or issued for delivery in New York** shall contain a fraud notice. Furthermore, the DFS opinion concluded that the aforementioned applications and claim forms, including those of an excess line insurer procured by an excess line broker in New York, must contain the specific fraud notice that applies to the kind of insurance being sold.



2014 Affidavit Filing Reminder

ELANY members are reminded that all affidavits for accounts inceptioning in 2014, as well as premium bearing endorsements effective during 2014 or earlier, must be received in our office by **February 17, 2015** to be included in their 2014 tax summary report. Please note that items currently in suspense are not included in the tax summary unless you have successfully resubmitted them for stamping on or before February 17, 2014. Now would be a good time to review your monthly reports for any discrepancies and to reconcile your books and records.

For more information regarding "2014 Affidavit Filings and Premium Tax Reports," please visit our website www.elany.org and refer to the "Hot News" navigation bar, click on ELANY Bulletins, then click on ELANY Bulletin No. 2014-26.

New Educational Video Added to ELANY's Website

As part of ELANY's continuing endeavor to enhance, revise and update our website, we have added a new educational video titled "Free Trade Zone or Excess Line Insurance?". The video helps explain the differences between these two unique markets and offers some guidance to assist brokers in selecting the most appropriate market for any given client or account.



To view this video, please visit the ELANY website www.elany.org and refer to the Education/Training navigation bar then click on "Free Trade Zone or Excess Line Insurance?".

Department of Financial Services – Insurance Division

ELANY wishes to congratulate Mark Wade on his appointment as the new Deputy Superintendent of the Property Bureau. ELANY management staff recently met with Deputy Superintendent Wade and Chief Insurance Examiner Moe Morgenstern of the Property Bureau and offered a short orientation on ELANY's functions. We agreed to meet again soon for the purpose of discussing ELANY's priorities to improve the E&S marketplace in New York.

PHIL BALLINGER

GOING.....GOING.....



Our good friend Phil Ballinger, who has led the Texas Stamping Office (SLSOT) as Executive Director for the last 14 years, is soon to be **gone**.... Phil, who has spent a total of 22 years at SLSOT and his lovely wife, Denise, have decided to go out at the top of their careers to give the three R's, Rest, Relaxation and Retirement a try.

Phil has served our insurance community well by successfully bringing the often very diverse interests of Texas regulators, legislators, insurers, brokers and insureds into coalition supported reforms. He was successful by being honest, focused on common interests and saying what needed to be said without creating divisiveness or bad feelings.

Ballinger served in a number of unique industry roles complimenting his career including acting as Vice President of the Board of Directors for the Derek Hughes/NAPSLO Educational Foundation, serving on the National Advisory Committee for the Associate in Surplus Lines Insurance (ASLI) program and teaching at the NAPSLO Advanced School.

At ELANY, we will all miss his kindness, contributions and great sense of humor. If anyone wants to talk Phil out of this, his new, unlisted phone number is..... just kidding Phil!

2014 FEDERAL LEGISLATION

The industry played the part of Charlie Brown to Congress' Lucy this year. TRIA, the Terrorism Risk Insurance Act, expires on December 31st. While TRIA renewal legislation went through a gauntlet of challenges, just when it appeared the Senate would pass the version of TRIA adopted by the House of Representatives, one Senator from Oklahoma was able to set the bill aside. Parliamentary procedure trumps majority rule in the hallowed, dysfunctional halls of the U.S. Congress.

Attached to the TRIA legislation was NARAB II, a bill widely supported by the insurance industry and producer trade associations in particular. This bill, would tremendously improve nonresident producer licensing if passed and signed into law. Both TRIA and NARAB II will be back early in 2015 facing a new Congress and some new challenges.

In the meantime, brokers should determine whether any in-force policies contain TRIA coverage endorsements which terminate the terrorism coverage when TRIA expires namely December 31st 2014.

Insureds should be reminded of the lapse of terrorism coverage if applicable and that stand alone or other terrorism coverage could be sought in the voluntary market if the insured requests it. Since New York does not permit an exclusion for fire following a terrorist event on admitted nor excess line policies, that information should provide some comfort and stability.

Calendar

2015

January

Thursday January 29	Professional Insurance Agents of New York (PIANY) Metro Rap Brooklyn Marriott Brooklyn, New York
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February

Monday–Wednesday February 23– February 25	National Association of Professional Surplus Lines Offices (NAPSLO) Mid-Year Leadership Forum Fontainebleau Miami Beach Miami Beach, Florida
Friday–Sunday February 27–March 1	The National Conference of Insurance Legislators (NCOIL) Spring Meeting The Mills House Wyndham Grand Hotel Charleston, South Carolina

March

Saturday–Tuesday March 28–March 31	National Association of Insurance Commissioners (NAIC) Spring Meeting Sheraton Phoenix Downtown and Hyatt Regency & Convention Center Phoenix, Arizona
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April

Thursday April 16	Insurance Club of Buffalo Buffalo I-Day Buffalo Niagara Convention Center Buffalo, New York
Wednesday April 22	Professional Insurance Agents of New York (PIANY) Long Island Rap Crest Hollow Country Club Woodbury, New York
Sunday–Wednesday April 26–April 29	Risk and Insurance Management Society (RIMS) Annual Conference & Exhibition New Orleans Ernest N. Morial Convention Center New Orleans, Louisiana

May

Wednesday May 6	ELANY Annual Members' Meeting Location and Time to be Announced
Sunday–Wednesday May 17–May 20	American Association of Managing General Agents (AAMGA) Annual Meeting Gaylord National Resort National Harbor, Maryland
Sunday–Wednesday May 17–May 20	New York Insurance Association, Inc. (NYIA) Annual Conference Saratoga Hilton Saratoga Springs, New York

2014 NEW YORK LEGISLATION

It was a relatively quiet year for insurance legislation in New York. One bill in particular was supported by and of great interest to insurance producers. The bill A.3107-D / S.5804 sponsored by Assemblyman Joe Morelle and Senator Jim Seward respectively, passed both Houses. The bill is designed to prohibit the misuse of certificates of insurance. In effect the bill makes it a violation of law

for a third party to demand language in a certificate of insurance which is inconsistent with the policy language.

A similar bill was passed last year but vetoed by the Governor. This year's bill was amended to create a little more latitude for state agencies to obtain certificates which have additional requirements if the certificate form is approved by the Department of Financial Services (DFS).

As this newsletter went to press, ELANY learned that the Governor's office is seeking some additional modifications to the bill by way of a chapter amendment in order to sign it into law.

IICF WEEK OF GIVING

The ELANY staff participated in the Insurance Industry Industrial Charitable Foundation's (IICF) "Week of Giving – October 11–October 18."



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