

LICENSING PROCEDURES

FOR

MANAGING GENERAL AGENTS

TO OBTAIN AUTHORITY

IN VIRGINIA

October 2005

GENERAL INFORMATION

The 1992 Virginia General Assembly passed legislation requiring the licensing of managing general agents effective October 1, 1992 (Article 6 (§ 38.2-1858 et seq.) of Chapter 18 of Title 38.2 of the Code of Virginia). In 2001 the Virginia General Assembly passed legislation that repealed and replaced in its entirety Article 6 with Article 9 (§ 38.2-1358 et seq. of Chapter 13 of Title 38.2 of the Code of Virginia), effective September 1, 2002. A copy of Article 9 may be obtained from the Virginia Legislative Information System's website at: <http://law.lis.virginia.gov/vacode>, or by contacting Janis R. Bunce, Financial Regulation Division, Bureau of Insurance at (804) 371-9063.

Who is considered to be a managing general agent under the law?

Any individual, partnership, limited partnership, limited liability company or corporation who:

1. manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office; and
2. acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or exceeding five percent of the surplus to policyholders of the insurer as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following:
 - a. adjusts or pays claims in excess of **\$1,000**; and/or
 - b. negotiates reinsurance on behalf of the insurer.

As used above, "**underwrites**" means the authority to accept or reject risks on behalf of the insurer.

Who is NOT considered a managing general agent?

1. An employee of the insurer.
2. A U.S. manager of the United States branch of an alien insurer.
3. An underwriting manager which manages all the insurance operations of the insurer, is under common control with the insurer, and whose compensation is not based on the volume of premiums written.
4. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer.

Who must be licensed as a managing general agent in Virginia?

1. Managing general agents who represent domestic insurers.
2. Managing general agents who represent foreign or alien insurers, unless the managing general agent is licensed in another state and that state has laws substantially similar to the laws in Virginia.

LICENSING REQUIREMENTS

How does an individual, partnership, limited partnership, limited liability company or corporation apply for a managing general agent's license?

Submit a completed Initial Application for Managing General Agents License-form along with:

1. A \$500 nonrefundable application fee;
2. A completed [biographical affidavit](#) for each individual to be authorized to act as a managing general agent under the license pursuant to § 38.2-1358;
3. A current audited financial statement certified by a certified public accountant;
4. A certified copy of the managing general agent's organizational documents (i.e. Articles of Incorporation, Certificate of Incorporation, Certificate of Organization or Certificate of Limited Partnership);
5. A certification or attestation of a fidelity bond for the protection of each insurer the managing general agent represents in an amount equal to at least 10% of the annual gross direct written premium produced by the managing general agent;
6. A certification or attestation of an errors and omissions policy with limits set at \$1,000,000 or 25% of the annual gross direct written premium produced by the managing general agent, whichever is greater; and
7. A copy of any appointments or contracts the managing general agent has with any insurer.

What are the license renewal requirements?

The license will be in effect for up to two years depending upon when it is issued. It must be renewed every other **June 30**. The Bureau will mail a renewal application form to the managing general agent that must be returned to the Bureau **between May 1 and June 1** of each year in which the license will expire.

STATUTORY REQUIREMENTS

§ 38.2-1360. Required contract provisions. - No insurer shall retain or act through a managing general agent unless there is in force a written contract between said insurer and its managing general agent which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

1. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent pending the outcome of any dispute regarding the cause for termination.
2. The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.
3. All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank that is a qualified U.S. financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The managing general agent shall maintain a separate bank account for each insurer it represents.
4. Separate records of business written by the managing general agent will be maintained. The insurer shall have reasonable access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the Commission shall have access to all books, bank accounts and records of the managing general agent in a form usable by the Commission. Such records shall be retained in order to accomplish the purpose of subdivision 9 of this section, but in no case for a period of less than 5 years.
5. The contract may not be assigned in whole or in part by the managing general agent.
6. Appropriate underwriting guidelines including:
 - a. The maximum annual premium volume;
 - b. The basis of the rates to be charged;
 - c. The types of risks that may be written;
 - d. Maximum limits of liability;
 - e. Applicable exclusions;
 - f. Territorial limitations;
 - g. Policy cancellation provisions; and
 - h. The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations.

7. If the contract permits the managing general agent to settle claims on behalf of the insurer:
 - a. All claims must be reported to the insurer in a timely manner.
 - b. A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:
 1. Has the potential to exceed one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the company, or any other amount deemed appropriate by the Commission, whichever is less;
 2. Involves a coverage dispute;
 3. May exceed the managing general agent's claims settlement authority;
 4. Is open for more than six months; or
 5. Is closed by payment of an amount exceeding one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the company, or any other amount deemed appropriate by the Commission, whichever is less.
 - c. All claim files will be the joint property of the insurer and the managing general agent. However, upon entry of an order of liquidation or the appointment of a receiver for the liquidation of an insurer, such files shall become the sole property of the insurer or its estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.
 - d. Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority pending the outcome of any dispute regarding the cause for termination.
8. Where electronic claim files are in existence, the contract must address the timely transmission of the data.
9. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until the profits have been verified pursuant to subsection B of § 38.2-1361 (i) one year after they are earned for property insurance business and health insurance business and (ii) five years

after they are earned on casualty insurance business.

10. The managing general agent shall not:
 - a. Bind reinsurance contracts or similar risk sharing arrangements, except that a managing general agent which acts on behalf of a ceding insurer may bind facultative reinsurance contracts by placing individual risks pursuant to obligatory facultative agreements provided that the contract between the insurer and the managing general agent contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverage and amounts or percentages that may be reinsured and commission schedules;
 - b. Commit the insurer to participate in insurance or reinsurance syndicates;
 - c. Appoint any agent unless (i) the agent is lawfully licensed to transact the type of insurance for which he is appointed and (ii) the insurer has notified the Commission, in writing, of the managing general agent's authorization to appoint agents on its behalf;
 - d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which amount shall not exceed one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year;
 - e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;
 - f. Permit any agent appointed by the managing general agent to serve on the insurer's board of directors;
 - g. Jointly employ an individual who is employed with the insurer; or
 - h. Utilize or engage a submanaging general agent.

§ 38.2-1362. Examination authority. - The acts of a managing general agent are considered to be the acts of the insurer on whose behalf it is acting. In addition to examination pursuant to § 38.2-1317 et seq., a managing general agent may be examined pursuant to § 38.2-1809.

§ 38.2-1363. Penalties and liabilities; grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

E. If an order of rehabilitation or liquidation of the insurer has been entered entered pursuant to Chapter 15 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with the provisions of this article, or any rule, regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

MISCELLANEOUS PROCEDURES

What other requirements exist?

For contract and appointment requirements, contact the insurer for which you wish to serve as a managing general agent.

1. Section 38.2-1364 A of the Code of Virginia states that each licensed managing general agent shall report within thirty (30) calendar days to the Bureau in writing of any change of address or name. When notifying the Bureau of such changes, please include the following information:
 - a. Social Security Number/Federal Employer Identification Number;
 - b. Name;
 - c. Old Address/New Address;
 - d. Copy of divorce decree, if applicable, when changing from current name to a previous name, **or** copy of certificate from Clerk of the Court, Bureau of Vital Statistics, etc., when making formal name change.

Upon receipt of an address or name change the Bureau will update our system and generate an acknowledgement letter that will reflect your new resident address. If you do not receive an acknowledgement letter within thirty (30) calendar days of submitting your change of address, you should contact the Bureau again.

2. Pursuant to § 38.2-1364 C of the Code of Virginia, once this license has been issued, you must report within thirty (30) calendar days to the Bureau the facts and circumstances regarding a conviction of or pleading guilty or nolo contendere to any felony offense.
3. If you are licensed in another state and doing business in this Commonwealth, please contact the Bureau in writing and provide this office with your full name or agency name, Social Security Number or FEIN, a copy of the MGA license issued to you by another state insurance department, an address and a day-time telephone number where you can be reached.

The above information is not intended to be all-inclusive.

Where can forms be obtained?

You may obtain forms for licensing by calling the Bureau at 804-371-9546, or you may use the Bureau's website at:

<http://www.scc.virginia.gov/boi/co/index.aspx>

<p>Bureau of Insurance Financial Regulation Division P. O. Box 1157 Richmond, Virginia 23218</p>

**BUREAU OF INSURANCE
STATE CORPORATION COMMISSION
P.O. BOX 1157
RICHMOND, VA 23218**

**INSTRUCTIONS FOR COMPLETING
THE INITIAL MANAGING GENERAL AGENT LICENSE APPLICATION**

GENERAL

1. All responses except for required signature should be printed clearly or typed.
2. Terms used in the application have the same meaning as they have when used in § 38.2-1358 of the Code of Virginia and [Administrative Letter 2002-11](#): Licensing of Managing General Agents.
3. The applicant must notify the Bureau of Insurance of any changes in the information provided pursuant to this application and its attachments within thirty (30) calendar days of such change being known, except for financial statement information which must be provided annually.
4. A licensed managing general agent convicted of a felony must report to the Bureau of Insurance within thirty (30) calendar days the facts and circumstances regarding the criminal conviction.
5. Changes in the name and address of the resident of Virginia upon whom notices or order of the Commission or process affecting such nonresident managing general agent may be served shall not become effective until acknowledged by the Commission.
6. The application must be signed by someone having express authority to sign the application on behalf of the applicant.

WHAT MUST ACCOMPANY THE APPLICATION?

Application Fee: A \$500 nonrefundable application fee should accompany the application. The check should be made payable to the Treasurer of Virginia and sent along with the application and attachments to the Financial Analysis Section at the above address.

Page 2, Entry 2: Proof any fictitious name being used in Virginia has been registered with the Clerk of the Commission.

Page 3, Entry 9: A certified copy of the managing general agent's organizational documents (i.e. Articles of Incorporation, Certificate of Incorporation, Certificate of Organization or Certificate of Limited Partnership).

Page 3, Entry 11A: If not already provided, the managing general agent must submit copies of any appointments or contracts it has with insurers in accordance with § 38.2-1359 H of the Code of Virginia.

Page 3 Entry 12: A current audited financial statement certified by a certified public accountant.

Page 5, Entry 17: A certification or attestation of any bond and errors and omissions policy naming the applicant and its several members, which are for the protection of the insurers represented in accordance with § 38.2-1359 of the Code of Virginia.

Page 5, Entry 19: All members of a partnership, limited partnership, limited liability company or corporation, and any officers, directors, or employees designated to act as a managing general agent under the license must be listed in the application and submit current [biographical affidavits](#).

FOR OFFICE USE ONLY

License No.: _____

Issued: _____

Expires: _____

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
P. O. BOX 1157
RICHMOND, VA 23218**

INITIAL APPLICATION FOR A MANAGING GENERAL AGENTS LICENSE

A \$500 nonrefundable application fee must be paid when this application is submitted. Checks should be made payable to the Treasurer of Virginia. Do not send cash or a personal check. All questions must be answered and all information requested must be submitted with this application to be accepted by the Bureau of Insurance.

This application must be verified and executed by all members of a partnership, limited partnership, limited liability company or corporation, AND any officers, directors, or employees designated to act as a managing general agent under the license pursuant to § 38.2-1359 of the Code of Virginia.

PLEASE PRINT CLEARLY OR TYPE

Are you a resident or nonresident? A resident means an individual domiciled and residing in Virginia, a partnership duly formed and recorded in Virginia, or a corporation incorporated and existing under the laws of Virginia. All other persons (individuals, partnerships, limited partnerships, limited liability companies and corporations) are nonresidents. **(Check one below)**

Resident

Nonresident

1. Name of Applicant:

2. Does the applicant intend to transact business under any other names or under its initials? () YES () NO

If "YES," exactly state the other name(s) to be used, and attach proof that the use of the other name(s) have been registered with the Clerk of the Commission, pursuant to § 59.1-70 of the Code of Virginia.

3. Type of Business Organization: **(CHECK ONE)**

() Sole Proprietorship

() Partnership

() Limited Partnership

() Limited Liability Company

() Corporation

State of Incorporation or Organization: _____

Date of Incorporation or Organization: _____

() Other (specify):

4. Federal Tax ID Number: _____

5. Street Address of Principal Administrative Office:

City: _____ State: _____ Zip Code: _____

6. Mail Address (If not the same as principal administrative office):

City: _____ State: _____ Zip Code: _____

7. Telephone Number: () _____

Facsimile (FAX) Number: () _____

8. Name and telephone number of contact person:

Title: _____

9. Any foreign corporation must provide a copy of its Articles of Incorporation with any amendments thereto. The documents must be certified by the corporation's state of domicile. Any Virginia domiciled corporation, limited liability company or limited partnership must submit a certified copy of its organizational documents (i.e. Certificate of Incorporation, Certificate of Organization or Certificate of Limited Partnership).

10. Does the applicant:

A. Collect premiums? () YES () NO

B. Settle claims? () YES () NO

C. Will the applicant keep the funds collected for each insurer in a fiduciary capacity in a qualified financial institution as required by § 38.2-1360 of the Code of Virginia?

() YES () NO

If "NO," state the reason(s): _____

11. A. Does applicant have evidence of its appointments or contracts as a managing general agent as required by § 38.2-1359 H of the Code of Virginia?

() YES () NO

If "NO," state the reason(s): _____

B. Does applicant have a written, executed contract with each insurer as required by § 38.2-1360 of the Code of Virginia? () YES () NO

If "NO," state reason(s): _____

12. Is a current audited financial statement certified by a certified public accountant included with this application? () YES () NO

If "NO," state reason(s): _____

13. Has the applicant ever had an insurance agent, managing general agent, producer, or broker license refused, suspended, or revoked? () YES () NO

(If "YES," attach a separate statement giving the relevant facts, including names, dates, circumstances, etc.)

14. Has the applicant or any of its principals, partners, officers, directors or controlling stockholders ever been convicted or had a sentence imposed or suspended or had pronouncement of a sentence suspended or been pardoned for conviction of or pleaded guilty or nolo contendere to an information or indictment charging any felony, or charging a misdemeanor involving embezzlement, theft, larceny, or mail fraud, or charging a violation of any corporate securities statute or any insurance law, or have you been the subject of any disciplinary proceedings of any federal or state regulatory agency?
() YES () NO

(If "YES," furnish a statement giving the complete facts in your own words, including:

- **Date and nature of the offense;**
- **Name and locality of the law enforcement agency, if any, involved;**
- **Name and locality of the court, if any involved; and,**
- **Disposition of each such matter.)**

15. Is the applicant now, or has it ever been, indebted, other than for current accounts, to any company, organization or person for unpaid premiums or return premiums?
() YES () NO

(If "YES," attach a statement for each such occurrence giving full details concerning the indebtedness including how it arose, the parties involved and the final outcome.)

16. Does the applicant, or any employee of the applicant, hold a ten percent (10%) or greater ownership interest, either directly or indirectly, or beneficially, in any insurer, other than as a policyholder or claimant?
() YES () NO

(If "YES," for each such interest, provide a statement listing the:

- **Name of the person or entity who has the relationship with the insurer;**
- **Relationship of the person or entity to the applicant [i.e., officer, spouse of officer (giving name of the officer, etc.);**
- **Name of the insurer;**
- **Type of insurer (i.e., property, casualty, life, health, etc.); and,**
- **Extent of the relationship [amount of control/ownership].)**

17. BOND AND INSURANCE REQUIREMENTS

Provide as an attachment to this application a certification or attestation of any bond and errors and omissions policy naming the applicant and its several members, which are for the protection of the insurers represented in accordance with § 38.2-1359 of the Code of Virginia.

Does the applicant have any such bonds? () YES () NO

If "YES," give details including the limit of coverage and the amount of any deductible.

Does the applicant have any such errors and omissions policies?

() YES () NO

If "YES," give details including the limit of coverage and the amount of any deductible.

18. NONRESIDENTS ONLY

Pursuant to § 38.2-1358 of the Code of Virginia, do you hereby:

A. Appoint the Clerk of the Commission the agent for service of process in any action's proceeding arising out of or in connection with the exercise of this license?

() YES () NO

B. Agree to furnish the Clerk of the Commission with the name and address, as stated below, of a resident of this Commonwealth upon whom notices or orders of the Commission or process affecting such nonresident managing general agent may be served, and to promptly notify the Clerk of the Commission in writing of every change in designated agent for service of process?

() YES () NO

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Changes in the name and address of the above resident of this Commonwealth upon whom notices or order of the Commission or process affecting such nonresident managing general agent may be served shall not become effective until acknowledged by the Commission.

19. Provide the name and title of all members of a partnership, limited partnership, limited liability company or corporation, AND any officers, directors, or employees designated to act

as a managing general agent under the license pursuant to § 38.2-1359 of the Code of Virginia. Additionally, each person required to be listed in the application must also submit a current [biographical affidavit](#).

Name: _____

Title: _____

The applicant must notify the Bureau of Insurance of any changes in the information provided pursuant to this application and its attachments within thirty (30) days of such change being known, except for financial statement information which must be provided annually.

NOTARIAL ACKNOWLEDGMENT REQUIRED OF ALL APPLICANTS

Dated and signed this _____ day of _____, 20__ at _____.

I hereby certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief, and that I have express authority to execute this application on behalf of the applicant.

(Authorized Signature)

(Title)

State of _____

City/County of _____

Personally appeared before me the above named _____ personally known to me, who, being duly sworn, deposes and says that he/she executed the above instrument and that the statements and answers contained therein are true and correct to the best of his/her knowledge and belief, and that he/she has express authority to execute this application on behalf of the applicant.

Subscribed and sworn to before me this _____ day of _____, 20__.

(SEAL)

Notary Public

My Commission Expires: _____