

§ 58-9-16. Manager and reinsurer transactions.

(a) Transactions between a manager and the reinsurer it represents as a manager shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the manager, a certified copy of the approved contract shall be filed with the Commissioner for approval. The contract shall include provisions to the effect that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the manager. The reinsurer may immediately suspend the authority of the manager to assume or cede business during the pendency of any dispute regarding the cause for termination.
- (2) The manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the manager and will remit all funds due under the contract to the reinsurer at least once every month.
- (3) All funds collected for the reinsurer's account will be held by the manager in a fiduciary capacity in a qualified United States financial institution. The manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The manager shall maintain a separate bank account for each reinsurer that it represents.
- (4) For at least 10 years after the expiration of each contract of reinsurance transacted by the manager, the manager will keep a complete record for each transaction showing:
 - a. The type of contract, limits, underwriting restrictions, classes or risks, and territory;
 - b. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risk;
 - c. Reporting and settlement requirements of balances;
 - d. Rate used to compute the reinsurance premium;
 - e. Names and addresses of reinsurers;
 - f. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the manager;
 - g. Related correspondence and memoranda;
 - h. Proof of placement;
 - i. Details regarding retrocessions handled by the manager, as permitted by G.S. 58-9-21, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - j. Financial records, including, but not limited to, premium and loss accounts; and
 - k. When the manager places a reinsurance contract on behalf of a ceding insurer:
 1. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 2. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

- (5) The reinsurer will have access and the right to copy all accounts and records maintained by the manager related to its business in a form usable by the reinsurer.
- (6) The contract cannot be assigned in whole or in part by the manager.
- (7) The manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.
- (8) The rates, terms, and purposes of commissions, charges, and other fees that the manager may levy against the reinsurer shall be set forth.
- (9) If the contract permits the manager to settle claims on behalf of the reinsurer:
 - a. All claims will be reported to the reinsurer in a timely manner;
 - b. A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - 1. Has the potential to exceed an amount set by the reinsurer and approved by the Commissioner;
 - 2. Involves a coverage dispute;
 - 3. May exceed the manager's claims settlement authority;
 - 4. Is open for more than six months; or
 - 5. Is closed by payment of an amount set by the reinsurer and approved by the Commissioner.
 - c. All claim files will be the joint property of the reinsurer and manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the manager shall have reasonable access to and the right to copy the files on a timely basis; and
 - d. Any settlement authority granted to the manager may be terminated for cause upon the reinsurer's written notice to the manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.
- (10) If the contract provides for a sharing of interim profits by the manager, the interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business and not until the adequacy of reserves on remaining claims has been verified pursuant to G.S. 58-9-21.
- (11) The manager will annually provide the reinsurer with an audited statement of its financial condition prepared by an independent certified public accountant.
- (12) The reinsurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the manager.
- (13) The manager will disclose to the reinsurer any relationship it has with any insurer before ceding or assuming any business with the insurer pursuant to this contract.
- (14) Within the scope of its actual or apparent authority, the acts of the manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.
- (b) A manager shall not:
 - (1) Cede retrocessions on behalf of the reinsurer, except that the manager may cede facultative retrocessions pursuant to obligatory facultative agreements

if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

- (2) Commit the reinsurer to participate in reinsurance syndicates.
- (3) Appoint any producer without assuring that the producer is duly licensed to transact the type of reinsurance for which he is appointed.
- (4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.
- (5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.
- (6) Jointly employ an individual who is employed by the reinsurer unless the manager is under common control with the reinsurer under Article 19 of this Chapter.
- (7) Appoint a submanager. (1993, c. 452, s. 22.)