

SURPLUS LINES ASSOCIATION OF MINNESOTA

**FIRST AMENDED AND RESTATED
PLAN OF OPERATION**

**ARTICLE I
PLAN OF OPERATION**

A. Plan of Operation.

1. The plan of operation shall provide for the formation, operation, and governance of the Association. The plan of operation must provide for the election of a board of directors by the members of the Association. The board of directors shall elect officers as provided for in the plan of operation. The plan of operation shall establish the manner of voting and may weigh each member's vote to reflect the annual surplus lines insurance premium written by the member. Members employed by the same or affiliated employers may consolidate their premiums written and delegate an individual officer or partner to represent the member in the exercise of Association affairs, including service on the board of directors.

2. The plan of operation and any amendments to the plan of operation shall be submitted to the commissioner and shall be effective upon approval in writing by the commissioner. The Association and all members shall comply with the plan of operation or any amendments to it. Failure to comply with the plan of operation or any amendments shall constitute a violation for which the commissioner of commerce may issue an order requiring discontinuance of the violation.

3. If the interim board of directors fails to submit a suitable plan of operation within sixty (60) days following the creation of the interim board, or if at any time thereafter the Association fails to submit required amendments to the plan, the commissioner may submit to the Association a plan of operation or amendments to the plan, which the Association must follow. The plan of operation or amendments submitted by the commissioner shall continue in force until amended by the commissioner or superseded by a plan of operation or amendment submitted by the Association and approved by the commissioner. A plan of operation or an amendment submitted by the commissioner constitutes an order of the commissioner.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 2, sub 3.

B. Scope of Operation. The Association shall perform its functions under the plan of operation established under Article I, the Articles and Bylaws adopted pursuant to Article VIII and applicable law. The Association shall be authorized and have the duty to:

1. Receive, record, and stamp all surplus lines insurance documents that surplus lines licensees are required to file with the Association;
2. Prepare and deliver monthly to the commissioners of revenue and commerce a report regarding surplus lines business. The report must include a list of all the business procured during the preceding month, in the form the commissioners prescribe;
3. Educate its members regarding the surplus lines law of this state including insurance tax responsibilities and the rules and regulations of the commissioners of revenue and commerce relative to surplus lines insurance;
4. Communicate with organizations of agents, brokers, and admitted insurers with respect to the proper use of the surplus lines market;
5. Employ and retain persons necessary to carry out the duties of the Association;
6. Borrow money necessary to affect the purposes of the Association;
7. Enter contracts necessary to affect the purposes of the Association;
8. Provide other services to its members that are incidental or related to the purposes of the Association; and
9. Take other actions reasonably required to implement the provisions of this section.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 2, Subd. 1.

ARTICLE II MEMBER OBLIGATIONS

A. Member Obligations. A surplus lines licensee shall submit every insurance policy or contract issued under the licensee's license to the Surplus Lines Association of Minnesota for recording and stamping. The submission and stamping must be effected through electronic means. The submission must include:

1. The name of the insured;
2. A description and location of the insured property or risk;
3. The amount insured;
4. The gross premiums charged or returned;
5. The name of the surplus lines insurer from whom coverage has been procured;

6. The kind or kinds of insurance procured; and
7. The amount of premium subject to tax.

The submission of insurance policies or contracts to the Surplus Lines Association of Minnesota constitutes a certification by the surplus lines licensee, or by the insurance producer who presented the risk to the surplus lines licensee for placement as a surplus lines risk, that the insurance policies or contracts were procured in accordance with Minnesota Statutes 60A.195 to 60A.209.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 3, Subd. 1.

It shall be unlawful for an insurance agent, broker, or surplus lines licensee to deliver in this state any surplus lines insurance policy or contract unless the insurance document is stamped by the Association. A licensee's failure to comply with the requirements of this Subdivision shall not affect the validity of the coverage.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 2, Subd. 2.

ARTICLE III OPERATIONS

A. Address. The official address of the Association shall be the permanent office of the Association.

B. Employees, Agents. The Association may employ such persons, firms or corporations, attorneys or accountants, as are necessary for the performance of the duties imposed on the Association. Employees of the Association shall be wholly independent of any on-going connection with any Member of the Association.

C. Bank Accounts; Borrowing. The Association may open one or more bank accounts. Reasonable delegation of deposit and withdrawal authority to such accounts for Association business may be made consistent with prudent fiscal policy. The Association may borrow money as the board of directors in its judgment deems advantageous for the Association.

D. Budget and Fee Schedule. Prior to November 1 of each year, the board of directors shall adopt a budget for the Association's operating and capital expenses and contingent expenses for the period January 1 to December 31 following. The budget shall take into account unknown and unanticipated expenses as may reasonably occur and make provision for such expenses in accordance with prudent business practice. Based upon the anticipated volume of surplus line premium during the period, the board of directors shall adopt a countersignature fee to be charged members on all surplus line business submitted to the Association and may adopt a schedule for an annual fee, minimum fees, fees for late or erroneous filings or payments, or other fees approved by the board of directors. The countersignature fee and fee schedule shall be submitted to the Commissioner of Commerce for approval on or about August 1.

E. Fee Schedule. Based upon the anticipated volume of surplus line premium during the period, the board of directors shall adopt a countersignature fee to be charged members on all surplus line business submitted to the Association and may adopt a schedule for an annual fee, minimum fees, fees for late or erroneous filings or payments, or other fees approved by the board of directors. The countersignature fee and fee schedule shall be submitted to the Commissioner of Commerce for approval on or about August 1.

F. Stamping Fee. The services performed by the Association shall be funded by a stamping fee assessed for each premium-bearing document submitted to the Association. The stamping fee shall be established by the board of directors of the Association from time to time. The stamping fee shall be paid by the insured to the surplus lines licensee and remitted electronically to the Association by the surplus lines licensee. It shall be unlawful for an insurance agent, broker, or surplus lines licensee to deliver in this state any surplus lines insurance policy or contract unless the insurance document is stamped by the Association.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 2, Subd.7.

G. Countersignature Reports. The Association shall record and countersign all surplus line insurance documents submitted to it pursuant to the Minnesota Insurance statutes and shall prepare reports to the Commissioner of Commerce and to members as required therein and for such other purposes as approved by the board of directors.

H. Procedures Manual. The Association shall prepare and distribute a procedures manual to each member setting forth the procedure for submitting surplus line insurance documents to the Association and other matters germane to the operation of the Association.

I. Data. All data collected by the Association shall be stored and utilized solely for the operations of the Association. Unless otherwise classified by statute, a temporary classification under Minn. Statute 13.06, or federal law, information obtained by the commissioner from the Association is public, except that any data identifying insureds is private data on individuals or nonpublic data as defined in Minn. Statute 13.02, Subdivisions 9 and 12.

J. Statutory violations. The Association shall report perceived violations of Minnesota insurance statutes to the Commissioner of Commerce. The Association shall report perceived violations of Minnesota tax statutes to the Commissioner of Revenue.

ARTICLE IV RECORDS AND REPORTS

A. Records. A written record of the proceedings of each board meeting shall be retained by the Secretary with copies furnished to each director.

B. Audit. The plan of operation shall provide for an independent audit once each year of all the books and records of the Association and a report of such independent

audit shall be made to the board of directors, the commissioner of revenue and the commissioner of commerce, with a copy made available to each member to review at the Association office.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 2, Subd. 3 (b).

C. Reports to the Commissioner of Commerce. The Association shall file with the commissioner:

1. A copy of its plan of operation and any amendments to it;
2. A current list of its members revised at least annually; and
3. The name and address of a member of the board residing in this state upon whom notices or orders of the commissioner or processes issued at the direction of the commissioner may be served.

MINN. LAW 2008 Chp. 366, Art. 17, Sec. 2, Subd. 4.

D. Examination. The commissioner of commerce shall, at such times as deemed necessary, make or cause to be made an examination of the Association. The officers, managers, agents, and employees of the Association may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish a copy of the examination report to the Association. If the commissioner finds the Association to be in violation of Minn. Laws 2008, Chapter 366, Article 17 the commissioner may issue an order requiring the discontinuance of the violation.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 2, Subd. 5.

ARTICLE V IMMUNITY

There shall be no liability on the part of and no causes of action of any nature shall arise against the Association, its directors, officers, agents, or employees for any action taken or omitted by them in the performance of their powers and duties under this section, absent gross negligence or willful misconduct.

MINN. LAW 2008, Chp. 366, Art. 17, Sec. 2, Subd. 6.

ARTICLE VI DISSOLUTION

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the Corporation, distribute the assets of the Corporation to such organization or organizations as the Board may determine which are organized and operated exclusively for charitable or educational purposes and which qualify as exempt organizations under Section 501(c)(3) of the Code. Any assets not so

disposed of shall be disposed of by the district court of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, which are organized and operated exclusively for such purposes. Notwithstanding any provision herein to the contrary, nothing herein shall be construed to affect the disposition of property and assets held by the Corporation upon trust or other condition, or subject to any executory or special limitation, and such property, upon dissolution of the Corporation, shall be transferred in accordance with the trust, condition or limitation imposed with respect to it.

ARTICLE VII AMENDMENTS

This Plan may be amended at any annual, regular or special meeting of the board of directors by the affirmative vote of not less than five Directors. Amendments shall be effective upon approval in writing by the Commissioner of Commerce.

ARTICLE VIII CORPORATE FORM OF ORGANIZATION

The Association shall be duly organized as a nonprofit corporation under Minnesota Statutes, Chapter 317A, pursuant to the articles and bylaws appended to this Plan of Operation and incorporated herein. The Board of Directors shall be authorized to undertake the actions necessary to organize maintain and operate the Association pursuant to these articles and bylaws and applicable law in a manner consistent with this Plan of Operation.

ARTICLE IX FEDERAL TAX EXEMPT STATUS

The Association shall seek a tax exempt status under Section 501(c)(3) of the Federal Income Tax Code and shall conduct its operations consistent with the requirements for maintaining such tax exempt status. The Board of Directors is authorized to and shall undertake the actions necessary to secure and maintain such tax exempt status.