



EXCESS LINE ASSOCIATION
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INSTRUCTIONS FOR PRODUCING BROKERS ON HOW TO CORRECTLY COMPLETE EXCESS LINE AFFIDAVITS AND RELATED DOCUMENTS

*AN ONLINE AFFIDAVIT CREATION SYSTEM IS AVAILABLE THROUGH ELANY.
TO REGISTER, CONTACT THE ELANY HELPDESK AT 646-292-5598.*

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INSTRUCTIONS TO CORRECTLY COMPLETE PRODUCING BROKER AFFIDAVITS AND RELATED DOCUMENTS
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These instructions are provided to guide producing brokers in the affidaviting process. Submissions with multiple errors, material inconsistencies and incomplete documents are returned by ELANY to the excess line broker unstamped. Therefore, please use this guide to teach your staff how to correctly document excess line transactions and also use it to verify completeness and accuracy before forwarding submissions.

Remember these five important rules to protect your license.

- 1) Whenever you receive a quote on an account be careful to note who the insurer is. Producing brokers have accepted quotes in the past not realizing the quote was not from the licensed insurer but from an unlicensed affiliate insurer.
- 2) Whenever you deal with an unlicensed insurer, have your excess line broker involved at inception. Make sure you place risks only through licensed excess line brokers. Producing brokers who have inadvertently bound an account with an excess line insurer, will have difficulty finding a willing excess line broker to get involved after the account has been bound.
- 3) Never deliver an excess line policy, binder or cover note to a New York insured unless the first page of the document bears the stamp, logo and certification language of the Excess Line Association. Delivery without this page violates New York insurance law. You may deliver a confirmation of placement of coverage, as described in these instructions, as temporary evidence of coverage without the ELANY stamp page.
- 4) Never place an account with an unlicensed insurer that is not an eligible excess line insurer. Make sure any insurer with whom you intend to place excess line insurance is eligible under New York law. (Normally your excess line broker will do this for you.)
- 5) Only a New York licensed resident or nonresident broker can be a producing broker on a New York excess line risk. A person licensed exclusively as a New York agent cannot be a producing broker.

PRODUCING BROKER RESPONSIBILITIES

As the producing broker it is essential that all documents sent to you as evidence of coverage contain **minimum** terms to establish coverage and that all information is **correct**. Inaccurate identification of the named insured, risk location or coverage type should be immediately addressed for the sake of your exposure to an uninsured claim. Moreover, small discrepancies or omissions in addresses, named insureds and the like will cause ELANY to return the documents to the excess line broker. Therefore getting the information correctly addressed in the insuring documents and correctly transcribing the information to the affidavit and Notice of Excess Line Placement are essential requirements.

There are essentially three types of documents with which the producing broker must be concerned.

Those documents are:

- 1) A declarations page, cover note, binder or confirmation of placement of coverage*.
- 2) The “Notice of Excess Line Placement” and “Total Cost Form”.
- 3) A part C affidavit.

* **Confirmation of Placement of Coverage:** The excess line broker can issue this document to confirm in writing what an excess line insurer has agreed to before the insurer has issued a binder, cover note or declarations page. It is not a binder because the excess line broker is not acting as an agent for the insurer but it is temporary evidence of coverage and need not be stamped by ELANY prior to delivery.

These documents are reviewed and analyzed one at a time on the attached pages.

I. DECLARATIONS PAGE, COVER NOTE, BINDER OR CONFIRMATION OF PLACEMENT OF COVERAGE

THIS DOCUMENT MUST CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION:

- 1) THE NAME AND ADDRESS OF THE INSURED, (SUBMIT A SCHEDULE OF RISK LOCATIONS WHEN DIFFERENT FROM THE MAILING ADDRESS.)
- 2) THE GROSS PREMIUM CHARGED,
- 3) THE NAME(S) OF THE UNAUTHORIZED (ELIGIBLE EXCESS LINE) INSURER(S),
- 4) THE KIND OF INSURANCE PROCURED,
- 5) THE INCEPTION AND EXPIRATION DATES OF COVERAGE,
- 6) ALL SUCH DOCUMENTS MUST BEAR THE FOLLOWING SPECIFIC LEGEND/DISCLOSURE, IN TEN (10) POINT TYPE, DISCLOSING INFORMATION REQUIRED BY REGULATION 41.

“THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE INSURANCE DEPARTMENT PERTAINING TO POLICY FORMS”.

MAKE SURE THE EXCESS LINE BROKER HAS MET THIS REQUIREMENT WHEN YOU RECEIVE ANY EVIDENCE OF COVERAGE.

(CALL ELANY IF YOU NEED FURTHER INFORMATION ON THIS STAMP.)

MISTAKES TO AVOID:

- 1) MAKE SURE THE INFORMATION REQUIRED IS CLEARLY SET FORTH IN EACH COVER NOTE, DEC. PAGE BINDER AND CONFIRMATION OF PLACEMENT OF COVERAGE SUBMITTED.
- 2) DO NOT ADD INSPECTION, BROKER, STAMP FEES OR TAXES TO TOTAL OR GROSS PREMIUM. IF YOU SHOW THESE ON THE DEC. PAGE, ETC., SHOW THEM SEPARATELY (NOT AS ONE TOTALED GROSS PREMIUM.)

II. NOTICE OF EXCESS LINE PLACEMENT

IN EVERY EXCESS LINE PLACEMENT, THE EXCESS LINE BROKER OR THE PRODUCING BROKER MUST SEND THIS NOTICE OR ONE SUBSTANTIALLY SIMILAR, TO THE INSURED AND PROVIDE A COPY OF THE NOTICE TO ELANY WITH THE AFFIDAVIT SUBMISSION.

THE NOTICE MUST SPECIFY THE NAME OF THE INSURED AND THE NAME OF THE EXCESS LINE BROKER OR PRODUCING BROKER WHO SENT IT.

When administered properly the Notice of Excess Line Placement provides protection to the producing broker and/or excess line broker because it advises the insured that licensed companies declined the risk and that no guaranty fund protects the insured in the event of insolvency of the excess line insurer.

FOLLOW THESE SIMPLE STEPS:

- 1) Complete the Notices as shown
- 2) Issue the Notice combined with the total cost form. (In most transactions you are charging back the excess line tax, stamping fee and sometimes a broker or other fee. Insurance law §2119 requires the insured's signed consent for these charges. By combining the forms you have a signed receipt from the insured which proves the Notice was received.)
- 3) If the producing broker sends the Notice to the insured answer yes to affidavit question 3. If the excess line broker sends the Notice, the excess line broker answers Part "A" Question 2(c) "yes".
- 4) Keep a copy of the signed form in your file.
- 5) The excess line broker must file a copy of the Notice with ELANY. Do not delay sending the affidavit awaiting the return of the signed Notice since ELANY does not require a copy of the signed total cost form.

Type in Insured's name & address or at least set it forth below

ABC Brokerage
55 Fifth Avenue
New York, NY 55555

Insert the Name & Address of broker who is mailing the Notice or at least set it forth below

DRAFT
NOTICE OF EXCESS LINE PLACEMENT
Date: May 17, 2006 ← Insert Date

Consistent with the requirements of New York Insurance Law and Regulation 41
XYZ Corp is hereby advised that after a diligent effort to place the required insurance with companies authorized in New York to write coverages of the kind requested, all or a portion of the required coverages have been placed by ABC Brokerage with insurers not authorized to do an insurance business in New York and which are not subject to supervision by this State. Policies issued by such unauthorized insurers may not be subject to all of the regulations of the Superintendent of Insurance pertaining to policy forms. In the event of insolvency of the unauthorized insurers, losses will not be covered by any New York State Insolvency Fund.

Complete Total Cost Form for the particular risk

TOTAL COST FORM

In consideration of your placing my insurance as described in the policy referenced below, I agree to pay the total cost below which includes all premiums, inspection charges(**) and a service fee that includes taxes, stamping fees, and (if indicated) a fee(**) for compensation in addition to commissions received, and other expenses(**).

I further understand and agree that all fees, inspection charges and other expenses denoted by (**) are fully earned from the inception date of the policy and are non-refundable regardless of whether said policy is cancelled. Any policy changes which generate additional premium are subject to additional tax and stamping fee charges. (*)Where a portion of the risk is located outside the state of New York, taxes and stamping fees are only charged against the premium allocated to the New York portion of the risk.

| | | |
|---|--------------------------|----|
| Re: Policy No. | Insurer | |
| Policy Premium | | \$ |
| New York Allocated Premium (where applicable) | | \$ |
| Service Fee Charges: | | |
| Excess Line Tax (3.6%) (*) | | \$ |
| Stamping Fee (*) | | \$ |
| Broker Fee (**) | | \$ |
| Inspection Fee (**) | | \$ |
| Other Expenses (specify)(**) | | \$ |
| | Total Policy Cost | \$ |

(Signature of Insured)

MISTAKES TO AVOID:

- 1) MAKE SURE THE NAME OF THE INSURED IS IDENTICAL TO THE INSURED'S NAME AS SET FORTH ON THE DEC. PAGE, COVER NOTE OR BINDER.
- 2) MAKE SURE THE BROKER'S NAME IS IDENTICAL TO THAT SET FORTH IN THE PART A OR PART C AFFIDAVIT.

III. PART C AFFIDAVIT - PRODUCING BROKER

ONE SERIES OF CODE NUMBERS ARE REQUIRED FOR YOU TO CORRECTLY COMPLETE THE AFFIDAVIT; IT IS THE NAIC CODE OF EACH DECLINING INSURER. THESE CODES ARE AVAILABLE IN ELANY'S AFFIDAVIT SOFTWARE, FROM THE NAIC PUBLICATIONS DEPARTMENT (PHONE 816-374-7259) AND ARE ALSO SET FORTH IN BEST'S INSURANCE REPORTS. (MAKE SURE YOU USE THE NAIC CODE NUMBER NOT THE AM BEST CODE NUMBER.)

AFFIDAVIT NUMBER - THIS MUST BE THE SAME AS THE AFFIDAVIT NUMBER ASSIGNED BY THE EXCESS LINE BROKER TYPED ONTO THE APPLICABLE PART A AFFIDAVIT. ASK THE EXCESS LINE BROKER TO PROVIDE YOU THE NUMBER.

PART C SECTION 1 - PRODUCING BROKER INFORMATION

LIST THE PROPER NAME AND ADDRESS AND BROKER LICENSE NUMBER OF THE LICENSEE.

MISTAKES TO AVOID:

MAKE SURE THE PROPER AND COMPLETE NAME OF THE PRODUCING BROKER IS USED AND IS IDENTICAL TO THE NAME AS SHOWN IN THE NOTICE OF EXCESS LINE PLACEMENT TO THE INSURED.

PART C SECTION 2

TRANSCRIBE THE NAME OF THE INSURED, AS IT APPEARS ON THE DEC. PAGE, COVER NOTE OR BINDER.

MISTAKES TO AVOID:

1) DON'T LEAVE BLANKS FOR ELANY OR THE EXCESS LINE BROKER TO COMPLETE. FILL IN ALL INFORMATION.

PART C SECTION 3

CHECK (✓) THE 'Yes' BOX FOR ANSWER 3 IF YOU SENT TO THE INSURED THE "NOTICE OF EXCESS LINE PLACEMENT".

CHECK (✓) THE 'No' BOX FOR ANSWER 3 IF THE EXCESS LINE BROKER SENT THE NOTICE.

PART C SECTION 4 - DECLINATION INFORMATION

QUESTION 4(a)

IF THE TYPE OF RISK IS ON THE EXPORT LIST, NO DECLINATIONS NEED TO BE OBTAINED, CHECK (✓) "YES". SECTION 4(b+c) DO NOT NEED TO BE COMPLETED IF THIS TYPE OF COVERAGE IS ON THE EXPORT LIST. IF THE TYPE OF COVERAGE IS NOT ON THE EXPORT LIST CHECK (✓) "NO" AND COMPLETE 4(b).

QUESTION 4(b)

IF THE EXCESS LINE BROKER OBTAINED ALL OF THE DECLINATIONS, THE PRODUCING BROKER CAN CHECK (✓) "NO" AND SKIP THE REST OF SECTION 4.

IF YOU OBTAINED ANY OF THE DECLINATIONS CHECK (✓) "YES" AND COMPLETE THE DECLINATION INFORMATION FOR EACH DECLINATION OBTAINED. NOTE BETWEEN YOU AND THE EXCESS LINE BROKER'S PART A AFFIDAVIT, THREE (3) DECLINATIONS MUST BE SET FORTH.

THE FOLLOWING MUST BE PROVIDED FOR EACH COMPANY WHICH DECLINED THE RISK:

- 1) THE DATE OF DECLINATION
- 2) COMPANY NAME,
- 3) COMPANY NAIC CODE,
- 4) REASON FOR DECLINATION - THERE ARE THREE CHECK BOXES; CHECK (✓) ONE INSURER LACKS CAPACITY, A SPECIFIC UNDERWRITING REASON, (THIS IS USED APPROXIMATELY 80% OF THE TIME) OTHER REASON (WRITE IN SPECIFICS).
- 5) THE FIRST AND LAST NAME OF THE PERSON WHO DECLINED THE RISK,
- 6) THAT PERSON'S AFFILIATION WITH THE INSURER, I.E., EMPLOYEE, AGENT OR OTHER.

PART C - AFFIDAVIT BY PRODUCING BROKER

AFFIDAVIT NO. _____

1. PRODUCING BROKER INFORMATION

| | | | |
|---------|------|--------------------|----------|
| Name | | License No. BR- BR | |
| Address | City | State | Zip Code |

2. RISK INFORMATION:

Name of the Insured _____

(The name of the insured must be precisely the same in this affidavit and the declarations page, binder, cover note or confirmation of coverage.)

3. DISCLOSURE INFORMATION

Yes No

Did you personally advise the insured, that after a diligent effort to place the required insurance with companies authorized in New York to write coverage of the kind requested, all or a portion of the required insurance would be written by companies NOT authorized in New York.

4. DECLINATION INFORMATION

(a) Yes No

Has the Superintendent determined that declinations are not required for this type of risk? IF ANSWER TO QUESTION (a) IS "YES", SKIP QUESTIONS (b) AND (c) GO ON TO THE AFFIRMATION SECTION.

(b) Yes No

Was the risk described above submitted by the producing broker to companies: (1) each authorized in New York to write coverages of the kind requested; (2) which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved; and, (3) was such risk declined by each such company?

(c) If the answer to (b) above is "Yes", COMPLETE THE FOLLOWING SCHEDULE:

AUTHORIZED COMPANIES DECLINING THE RISK

1. Name of Company _____ Date Declin.: _____
 NAIC Code _____

The insurer declined to underwrite the risk because:

1. Insurer presently lacks adequate capacity to write this risk.
2. Specific underwriting reason.
3. Other (Specify) _____

Affiliation of Representative: Company Employee Agent Other (Specify) _____

Name of Representative Declining Risk _____

7) THE "REASON TO BELIEVE" THE INSURER WOULD WRITE THE RISK

I believed this insurer would consider underwriting this risk because:

CHECK (✓) ONE OF THE FOLLOWING:

1. RECENT ACCEPTANCE BY THE INSURER OF A RISK, REQUIRING THAT TYPE OF COVERAGE OR CLASS OF INSURANCE.
2. ADVERTISING BY THE INSURER OR ITS AGENT INDICATING IT ENTERTAINS THAT TYPE OF RISK/COVERAGE.
3. MEDIA COMMUNICATIONS (NEWSPAPERS, TRADE MAGAZINES, RADIO) WHICH INDICATE THE INSURER WILL UNDERWRITE THAT TYPE OF COVERAGE.
4. COMMUNICATIONS WITH OTHER PROFESSIONALS, SUCH AS BROKERS, AGENTS, RISK MANAGERS, INSURANCE DEPARTMENT OR ELANY PERSONNEL INDICATING THE INSURER ENTERTAINS SUCH RISKS.
5. ANY OTHER VALID BASIS YOU CAN DOCUMENT.

- Recent acceptance by the insurer of a risk, requiring that type of coverage or class of Insurance.
- Advertising by the insurer or its agent indicating it entertains that type of risk/coverage.
- Media communications (Newspapers, Trade Magazines, Radio) which indicate the insurer will underwrite that type of coverage.
- Communications with other professionals, such as brokers, agents, risk managers, insurance department or ELANY Personnel indicating the insurer entertains such risks.
- Any other valid basis you can document. _____

MISTAKES TO AVOID:

THE MOST REGULAR ERROR WHICH PRODUCING BROKERS MAKE IN THE AFFIDAVITING PROCESS IS THEY COMPLETE THE "REASON TO BELIEVE" SECTION BY STATING "INSURER DOESN'T WRITE CLASS OF INSURANCE" OR SOMETHING SIMILAR. THIS IS THE MOST IMPORTANT MISTAKE TO AVOID! **THESE ERRONEOUS AFFIDAVITS MUST BE REJECTED BY ELANY.**

KEEP THE FOLLOWING IN MIND.

- 1) YOU HAVE ALREADY STATED WHY THE INSURER REFUSED TO ACCEPT THE RISK I.E. YOU CHECKED OFF "INSURER PRESENTLY LACKS CAPACITY" OR THERE WAS A "SPECIFIC UNDERWRITING REASON."
- 2) THE REASON TO BELIEVE REQUIREMENT IS FOR YOU TO TELL THE INSURANCE DEPARTMENT THAT WHILE THIS INSURER WRITES THE "TYPE OF COVERAGE" OR "CLASS OF INSURANCE" IT WOULD NOT WRITE THIS SPECIFIC RISK. FOR EXAMPLE, THE INSURER WRITES FIRE INSURANCE BUT NOT ON VACANT PROPERTY, OR THE INSURER WRITES GENERAL LIABILITY INSURANCE BUT NOT IF THE APPLICANT HAS THREE OR MORE LOSSES IN THE LAST TWO YEARS.
- 3) **YOU DO NOT HAVE TO WRITE ALL OF THE INFORMATION OUT, JUST CHECK (✓) OFF THE APPLICABLE REASON TO BELIEVE, UNLESS CHECKING BOX "ANY OTHER VALID BASIS..."**

SIGN IT AND DATE IT!
YOU MAY FORWARD THE PART C BY FACSIMILE
TO THE EXCESS LINE BROKER AND
KEEP THE ORIGINAL SIGNED PART C IN YOUR FILE.

AFFIRMATION

I, _____, am the licensee or sublicensee of the named broker in Section 1 of this affirmation and I hereby affirm under penalties of perjury that all of the information contained herein is true to the best of my knowledge and belief.

Signature of Affiant _____ Date _____

AVOID THESE MOST FREQUENT ERRORS

FIRST, THE OBVIOUS: MOST ERRORS INVOLVE INCOMPLETE AFFIDAVITS, INCONSISTENCIES BETWEEN THE VARIOUS DOCUMENTS SUBMITTED, OR FAILURE TO SUBMIT ALL NECESSARY DOCUMENTS.

INCOMPLETE DOCUMENTS

- 1) REVIEW AND VERIFY THE PART C AFFIDAVIT IS COMPLETE AND CORRECT BEFORE SENDING IT TO THE EXCESS LINE BROKER.
- 2) MAKE SURE ALL QUESTIONS ARE ANSWERED BY CHECKING OFF THE APPROPRIATE YES/NO BOXES.
- 3) NOTE §4 “DECLINATION INFORMATION” MUST BE COMPLETED FOR EACH OF 3 DECLINING INSURERS, THAT’S 7 PIECES OF INFORMATION FOR EACH INSURER.
- 4) THE AFFIDAVIT NUMBER FROM PART A MUST BE TRANSCRIBED ONTO THE PART C AFFIDAVIT BY YOU OR THE EXCESS LINE BROKER.

ERRORS IN DOCUMENTS AND INCONSISTENCIES

- 1) THE MOST FREQUENT ERROR IS MISSTATING THE “REASON TO BELIEVE” IN §4 OF THE AFFIDAVIT. REVIEW THESE INSTRUCTIONS TO CORRECTLY COMPLETE THAT PORTION OF THE AFFIDAVIT.
- 2) MAKE SURE ALL INFORMATION ON THE AFFIDAVIT IS CORRECT, COMPLETE AND CONSISTENT WITH ALL PLACEMENT INFORMATION PREVIOUSLY OBTAINED.

SUBMIT ALL NECESSARY DOCUMENTS

- 1) A COPY OF A “NOTICE OF EXCESS LINE PLACEMENT” LETTER MUST BE SUBMITTED TO ELANY WITH EVERY AFFIDAVIT SUBMISSION. MAKE SURE THE BROKER’S NAME AND THE INSURED NAME IN THE LETTER ARE PRECISELY CONSISTENT WITH THE AFFIDAVITS AND DECLARATIONS PAGE RESPECTIVELY.
- 2) ALL RENEWAL SUBMISSIONS **MUST** INCLUDE A COPY OF THE DECLARATIONS PAGE OF THE EXPIRING POLICY.