

## Surplus Lines Insurers and Agents

### What is surplus lines insurance?

Surplus lines [insurance](#) is insurance placed with "unauthorized" insurers. An unauthorized insurer is either a domestic insurer approved by the commissioner to do business in Wisconsin only on a surplus lines basis through surplus lines agents, or a nondomestic insurer that is not licensed in Wisconsin, but who accepts business in Wisconsin through surplus lines agents.

A surplus lines agent is an agent licensed by the commissioner to place business in surplus lines insurance.

### What risks may be placed with unauthorized insurers?

All risks may be placed with unauthorized insurers, **except:**

- [title insurance](#)
- mortgage guaranty insurance
- accident and health [policies](#)
- worker's compensation insurance risks

Policyholders participating in the Wisconsin Injured Patients and Families Compensation Fund must purchase their underlying medical malpractice coverage from an insurer licensed in Wisconsin, or with a risk retention group approved by the commissioner to write this coverage in Wisconsin, pursuant to s. [655.23 \(3\) \(am\), Wis. Stat.](#)

This applies to policies giving first-dollar coverage, policies with small or very large [deductibles](#), and policies in the form of stop-loss or catastrophe coverage for self-insured risks.

### What is an alien insurer?

An alien insurer is an insurer domiciled outside the United States.

### May surplus lines agents place risks with any unauthorized insurer?

No. Agents shall not place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices. If, after adequate investigation, they find the insurer is in substandard or unsound financial condition, they must give the applicant notice in writing of the discovered deficiencies.

To be financially sound, an insurer must be able to satisfy standards comparable to those applied under the laws of this state to authorized insurers.

Acceptable alien insurers are those companies included on the Quarterly Listing of Alien Insurers, published by the National Association of Insurance Commissioners International Insurers Department [naic.org/prod\\_serv\\_alpha\\_listing.htm#quarterly\\_alien](http://naic.org/prod_serv_alpha_listing.htm#quarterly_alien).

### What procedures does a surplus lines agent have to follow?

Every licensed surplus lines agent who procures surplus lines insurance must promptly forward a completed copy of a surplus lines insurance proposal to the policyholder.

Every new or renewal insurance policy procured and delivered under surplus lines regulations must identify the name and address of the insurance agent who procured it, and must have stamped or affixed the following:

#### For more information or to file a complaint, visit our website or contact:

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p: 608-266-3585 | p: 1-800-236-8517 | f: 608-266-9935 | [ociinformation@wisconsin.gov](mailto:ociinformation@wisconsin.gov) | [oci.wi.gov](http://oci.wi.gov)

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"This insurance contract is with an insurer which has not obtained a certificate of authority to transact a regular insurance business in the state of Wisconsin, and is issued and delivered as surplus lines coverage pursuant to [s. 618.41, Wis. Stat. Section 618.43 \(1\), Wis. Stat.](#), requires payment by the policyholder of 3% tax on gross [premium](#)."

The policy must include a description of the subject of insurance and indicate the insurance:

- [coverage](#)
- conditions
- terms
- premium taxes to be collected from the policyholder
- premium charged
- name and address of the policyholder
- name and address of the insurer

When an insurer places new or renewal coverage under this section, confirmation of the insurance must be promptly delivered to the policyholder or their agent. This may be in the form of the policy as issued by the insurer or, if the policy is not yet available, a certificate, cover note, or other confirmation of insurance.

No person may do insurance business in this state if the person knows or should know the result is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer. Any person violating these conditions is personally liable to any claimant under the policy for any damage proximately caused by the person's violation. Damage may include:

- damage resulting from the necessity of placing insurance with an authorized insurer, or
- failure of the unauthorized insurer to perform the insurance contract.

### **What regulations are unauthorized insurers subject to?**

The placement of insurance with an unauthorized insurer, or a domestic insurer approved by the commissioner to do business in Wisconsin only on a surplus lines basis, is subject to [ss. 618.39, 618.41, 618.43](#), Wis. Stat., and [s. Ins 6.17, Wis. Adm. Code](#). Risks insured by unauthorized insurers, or by a domestic insurer approved by the commissioner to do business in Wisconsin only on a surplus lines basis, must be placed and serviced by surplus lines agents.

### **Are surplus lines agents permitted to advertise?**

Surplus lines agents may advertise the availability of their services in procuring, on behalf of persons seeking insurance, contracts with insurers not holding a certificate of authority in Wisconsin. However, these advertisements must not refer to any particular unauthorized insurer or insurers.

### **What records does a surplus lines agent have to keep?**

The surplus lines agent must maintain a record of each surplus lines insurance contract, evidenced by a copy of a daily report and other documents detailed in [s. Ins 6.17, Wis. Adm. Code](#). Records required to be maintained by the surplus lines agent shall be open at all times to examination by the commissioner without notice and shall be kept available and open to the commissioner for five years.

### **Is surplus lines business subject to Wisconsin tax?**

Insurance business transacted under the surplus lines regulations is subject to a premium tax of 3% of gross premiums. "Gross premium" is defined as premium and any fees charged to the policyholder.

All premium taxes collected by the surplus lines agent must be reported and forwarded to the commissioner on or before March 1 for all insurance procured, renewed, or continued during the preceding calendar year with unauthorized insurers. All premium taxes collected by the surplus lines agent are the property of the state of Wisconsin.

Concerning premium taxes on surplus lines business, there are no tax exemptions for any policyholder or risk, except for Indian Tribes and federally chartered credit unions. Surplus lines agents may use the NAIC OPTins system to submit premium taxes and the tax form to Wisconsin ([optins.org](http://optins.org)).

For general questions relating to surplus lines issues, please send an email to [OCISurplusLinesFilings@wisconsin.gov](mailto:OCISurplusLinesFilings@wisconsin.gov).