

Bulletin No. 2021-09

March 18, 2021

Re: TRANSACTION DOCUMENTATION ISSUES

The following problems have been noted by ELANY's examination staff. Since the problems noted below slow the processing of your transactions or cause transactions to be suspended, your efforts to prevent these problems from recurring will be most helpful.

I. Affidavit Forms Part A and Part C

These forms are specifically approved by the Department of Financial Services as to content and style. Brokers who use non-conforming affidavits will have their transactions suspended and returned. Some brokers are creating computerized forms which contain errors, omit content or are otherwise non-conforming. ELANY's staff cannot proof read every form. They focus on the completed content.

ELANY encourages all brokers, retailers and wholesalers, to use the ELANY online system. Contact the ELANY Helpdesk at elanyhelpdesk@elany.org to register to use the online system.

II. Endorsements

Excess line brokers are required to submit for stamping all premium bearing endorsements that modify the premium initially reported to ELANY on a declaration page, binder, or cover note, etc. The endorsements are stamped for the purpose of being delivered to an insured and to track premiums for verification to the state that the appropriate amount of taxes is or will be collected. Therefore, account current, billing statements or invoices and the like are not acceptable documents for stamping and will not be processed by ELANY. Please submit premium bearing endorsements to evidence changes in the amount of policy premium.

III. Continuous Policies / Policy Extensions

ELANY cannot process continuous until cancelled policies. The excess line law contemplates an inception and expiration date after which a new diligent search is required as a prerequisite to renewal. Moreover, the law requires taxes to be paid on a policy's written premium in the tax year of the inception date. As a continuous policy, any subsequent premium billed essentially as an installment would cause tax penalties and interest to accrue if processed in a subsequent tax year. Continuous policies do not fit neatly within the excess line law as currently written and are likely to create greater scrutiny from regulators if processed.

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Policy Extensions

ELANY will process policy extensions in limited circumstances. Similar to continuous policies, the excess line law contemplates a new diligent search at each policy's expiration. Therefore, extensions can be looked upon by regulators as a circumvention of the diligent search requirement. ELANY will not process any extension for a period of one year or more unless it is a policy specifically insuring a specific construction project.

V. Binders and/or Confirmations of Placement of Coverage

ELANY will stamp binders and confirmations when the document clearly states that coverage is bound, coverage has been placed or coverage is being confirmed. A marked-up policy application, submission, quote or any other document, which does not purport to provide coverage, is unacceptable. When ELANY stamps a document to be delivered to an insured, the document must clearly indicate to the insured that coverage has been bound.

VI. Notice of Excess Line Placement

Either the excess line broker or the producing broker must inform the insured (provide a notice of excess line placement) in writing prior to placement so says 11 NYCRR 27.5(e) (a/k/a Regulation 41). The broker who provides the written notice should answer affirmatively in the appropriate affidavit (Part A- Question 2(c) or Part C- Question 3), that notice was provided. ELANY will accept affidavits where both Part A and Part C answer these questions in the affirmative. ELANY examiners will require a change to the affidavit where the broker who provided the notice answers the affidavit question "No" when that broker's name is in the Notice of Excess Line placement submitted to ELANY.

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