



INFORMATIONAL BULLETIN

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Florida Department of Financial Services
Tom Gallagher, Chief Financial Officer

Florida Office of Insurance Regulation

Kevin McCarty, Director

To All Property, Casualty and Surety Insurers and General Lines Insurance Agents in the State of Florida

The purpose of this Bulletin is to inform property, casualty and surety insurers and general lines insurance agents of a recent court decision that affects the way nonresident general lines agents conduct business in Florida. The name of the case is *Council of Insurance Agents and Brokers v. Tom Gallagher* (Case No. 4:02cv208-RH). The decision was rendered by the United States District Court for the Northern District of Florida. The judgment, entered on September 30, 2003 was effective immediately and will not be appealed. The Department filed a Motion seeking to have the portion of the Order relating to the licensing of nonresident surplus lines agents delayed until July 1, 2004. This Motion, which was not opposed by the Council, was granted by the Court. The Department plans to propose legislation addressing the licensing and regulation of nonresident surplus lines agents in the near future.

The Court ruled that Sections 624.425, 626.741 and 626.927, Florida Statutes, violate the United States Constitution to the extent that they deny the same rights and privileges to Florida-licensed nonresident insurance agents that they afford to Florida-licensed resident insurance agents. Each of these sections of law restricts the ability of nonresident general lines agents to do business in Florida. The specific impact of the decision is set forth below:

Property, casualty and surety policies written through Florida-licensed nonresident agents are no longer required by law to be countersigned by a Florida resident insurance agent. Policies must be signed by the insurer and by a properly licensed resident or nonresident agent.

Florida-licensed nonresident general lines agents who sell property, casualty and surety insurance to Florida residents are no longer required by law to share commission with a Florida resident insurance agent for countersigning policies. However, it remains lawful for licensed agents to share commissions with other agents appointed and licensed to write the same kind or kinds of insurance. This case did not address existing contracts that may require such payments.

Florida-licensed nonresident agents may solicit, negotiate, or effect property, casualty and surety insurance contracts in Florida without being accompanied by a Florida resident insurance agent.

Florida-licensed nonresident general lines agents may have offices in Florida and may have a pecuniary interest in an office in Florida.

Nonresident surplus lines agents may obtain nonresident surplus lines licenses in Florida beginning on July 1, 2004.

The provisions above apply to all Florida-licensed non-resident general lines agents, including those working for Risk Retention Groups and Risk Purchasing Groups.

For further information, contact the Division of Agent & Agency Services at (850) 413-3137, ext. 1101.