



# OLR RESEARCH REPORT

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## **SURPLUS LINES INSURANCE**

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You asked us to compare surplus lines insurance in California, Florida, and New York. Specifically, you wanted to know (1) whether the three states differ in allowing placement of homeowners into the surplus lines market, (2) what information must be provided to the homeowner, and (3) the number of market denials required for surplus lines eligibility. You also requested a copy of each state's surplus lines affidavit.

### **SUMMARY**

Surplus lines insurance is a segment of the insurance market where an insured may obtain coverage from an unadmitted, out-of-state insurer for a risk that traditional or standard insurers are unable or unwilling to insure. Usually, these are unique or extraordinary risks such as a home in a hurricane-prone area, amusement park liability, or pet insurance. A state will permit "unadmitted" insurers (insurers that are not licensed to provide coverage in that state) to provide coverage for certain risks under certain circumstances. One common requirement for surplus lines eligibility is that a prospective insured must seek standard insurance (from state-authorized insurers) before obtaining insurance through the surplus lines market.

California, Florida, and New York prohibit surplus lines brokers or agents from procuring coverage until they can ensure that the insured made a “diligent effort” to place coverage with an authorized insurer. The insured and their broker or agent must complete and sign a standardized form certifying that they made a diligent effort and failed to find coverage. All three states provide that three declinations from authorized insurers generally satisfy the diligent effort requirement. This requirement may be waived or changed under certain circumstances.

The states do not appear to differ in how they treat the placement of homeowners in the surplus lines market, except Florida requires specific disclosure language to personal residential property risks that obtain surplus lines insurance.

### **SURPLUS LINES INSURANCE OVERVIEW**

Surplus lines insurance, also known as excess lines insurance, is defined as “[i]nsurance with an insurer that is not licensed to transact business within the state where the risk is located” (Black’s Law Dictionary, 9th ed. 2009, “insurance”). People generally seek insurance from a surplus lines carrier when the risk is unusual and the insurance companies authorized in the state (“admitted carriers”) are unable or unwilling to cover that risk. They must go through a state-authorized broker or agent to procure such insurance.

According to the American Association of Managing General Agents (AAMGA), surplus lines insurance carriers are not required to be licensed or regulated by a state in the same way that admitted carriers are. Because they are not bound by the same rate and form regulations as admitted carriers, surplus lines carriers have more flexibility to design a coverage policy and rate that meets the needs of the insured. However, surplus lines carriers are regulated in other ways. For example, AAMGA notes that surplus lines carriers generally:

1. must disclose financial information and other details;
2. are not protected by the state insurance guarantee fund;
3. may pay higher taxes;
4. cannot write insurance that is available in the standard market;
5. may write a policy only if the insured has already been rejected by a certain number of authorized insurers; and

6. may write a policy only if the agent placing the policy has a surplus lines broker license.

Generally, insurance can be obtained through the surplus lines market only if the risk is unusual, extraordinary, or does not meet the guidelines of the standard market. The [National Association of Professional Surplus Lines Offices](#) provides some examples of the type of risk commonly insured by surplus lines carriers:

- a developer re-building homes and businesses in hurricane-prone areas;
- a sports celebrity wanting to insure his or her legs or hands;
- a school district building a new high school;
- a non-profit seeking to provide food, medical care, or education in third-world countries;
- a research lab working on a promising, yet unproven new drug; and
- a law firm specializing in intellectual property work.

## **CALIFORNIA**

California requires brokers to make a diligent search among state-admitted insurers that write the particular type of insurance in question before procuring the insurance from a non-admitted insurer. A diligent search occurs if the required standardized form establishes that (1) three admitted insurers that actually write the particular type of insurance in the state have declined the risk, or (2) fewer than three admitted insurers actually write the particular type of insurance (Cal. Ins. Code § [1763](#)).

The law permits the insurance commissioner to maintain a list of insurance coverage or risks that are exempt from the diligent search requirements. Exemptions include “any type of insurance coverage or risk for which there is not a reasonable or adequate market among admitted insurers.” California also requires particular language to be included in surplus lines policy disclosures (Cal. Ins. Code §§ [1763.1](#) and [1764.1\(b\)](#)).

California’s diligent search form is available [here](#).

## **FLORIDA**

Insurance agents in Florida may procure surplus lines insurance only after making a diligent effort to obtain it from among the insurers authorized to both transact and actually write that kind and class of insurance. The amount of surplus lines insurance obtained is limited to the excess over the amount available from authorized insurers. “Diligent effort” requires a documented showing that coverage has been sought from and rejected by at least three authorized insurers currently writing such coverage and documenting these rejections. Only one declination is required for residential structures with a dwelling replacement cost of \$1 million or more ([Fla. Stat. §§ 626.914](#) and [626.916](#)).

Florida has specific disclosure requirements for agents procuring surplus lines coverage for personal residential property risks. Specifically, the surplus lines agent must advise the prospective insured (1) of the availability of coverage from the [Citizens Property Insurance Corporation](#) (CPIC), (2) that such coverage may be less expensive than the surplus lines insurance, (3) that emergency assessments and surcharges may be higher, and (4) that the amount of coverage may be less than existing coverage for the property (Fla. Stat. § [626.916](#)). The Florida legislature established CPIC as a result of severe hurricane damage in the 1990s, particularly from [Hurricane Andrew](#). CPIC provides insurance to Florida property owners who cannot otherwise obtain affordable insurance through the primary or surplus lines markets.

Florida’s diligent effort form can be found [here](#).

## **NEW YORK**

New York requires its surplus lines brokers to show that despite diligent effort, they could not procure the full amount of insurance from authorized insurers. The amount of such insurance can be no more than the excess over the amount procurable from an authorized insurer. A showing of three declinations constitutes diligent effort, although the insurance superintendent may determine after a hearing that a different number of declinations is appropriate for particular types of coverage (N.Y. Ins. Law §§ [2118\(b\)\(3\)](#) and [2118\(b\)\(4\)](#)).

New York’s diligent search form is available [here](#).

## **SOURCES**

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Florida Surplus Lines Service Office, Statement of Diligent Effort, <http://www.fslso.com/publications/forms/Diligent.Effort.pdf> (last visited May 1, 2013).

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*St. Petersburg Times*, Insurance Companies Still Paying the Price, <http://www.sptimes.com/2002/webspecials02/andrew/day1/story2.shtml> (August 18, 2002).

Surplus Line Association of California, Diligent Search Report, [http://www.sla-cal.org/broker\\_info/filing\\_forms/sl2/sl2.pdf](http://www.sla-cal.org/broker_info/filing_forms/sl2/sl2.pdf) (last visited May 1, 2013).

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