



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

**ADVISORY LETTER 2018-05  
(REVISED AND REISSUED)**

**TO: ALL INSURERS, INSURANCE ISSUERS, HEALTH MAINTENANCE ORGANIZATIONS, PRODUCERS, AND SURPLUS LINES BROKERS**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

**RE: NOTICE FOR SURPLUS LINES PRACTICES AND REVISION OF FORM FOR ACKNOWLEDGEMENT OF APPLICANT FOR PERSONAL LINES INSURANCE COVERAGE IN THE SURPLUS LINES MARKET**

**DATE: JANUARY 30, 2019**

The purpose of Advisory Letter 2018-05, as revised and reissued, is to provide guidance to all insurers, insurance issuers, health maintenance organizations, producers, and surplus lines brokers as to when a new Form 438 must be executed pursuant to Act 7 of the 2018 regular session.

Louisiana law requires that each surplus lines insurance policy or contract procured and delivered in Louisiana provide notice to the applicant, as set forth in La. R.S. 22:433. Louisiana law further requires that any licensed surplus lines broker that procures a personal lines policy with a surplus lines insurer shall obtain an acknowledgment from the applicant, no later than the date of binding coverage, on a form promulgated by the Commissioner as set forth in La. R.S. 22:438. The required form was originally issued by Bulletin No. 2013-06, and was revised on December 27, 2018 in the original issue of Advisory Letter 2018-05, and remains in effect.

Act 7 of the 2018 regular session amended La. R.S. 22:46(17) by expanding the definition of "surplus lines insurance" as follows (emphasis added):

- (17) "Surplus lines insurance" means any property and casualty or health and accident insurance in this state on property, risk, or exposure located or to be performed in this state, permitted to be placed through a licensed surplus lines broker with a surplus lines insurer.

Act 7 of the 2018 regular session also amended La. R.S. 22:46(17.1) to clarify that the definition of "surplus lines insurer" does not include a health maintenance organization.

Act 7 of the 2018 regular session amended the notice required by La. R.S. 22:433 for each insurance policy or contract procured and delivered as surplus lines coverage as follows:

## **NOTICE**

**This insurance policy is delivered as surplus lines coverage under the Louisiana Insurance Code.**

**In the event of the insolvency of the company issuing this contract, the policyholder or claimant is not covered by the Louisiana Insurance Guaranty Association or the Louisiana Life and Health Insurance Guaranty Association, which guarantees only specific types of policies issued by insurance companies authorized to do business in Louisiana.**

**This surplus lines policy has been procured by the following licensed Louisiana surplus lines broker:**

\_\_\_\_\_  
**Signature of Licensed Louisiana Surplus Lines Broker  
or Authorized Representative**

\_\_\_\_\_  
**Printed Name of Licensed Louisiana Surplus Lines Broker**

Any surplus lines insurance policy or contract procured on or after January 1, 2019, should include the notice language as amended by Act 7 of the 2018 regular session. Act 7 of the 2018 regular session also made a change to the form required by La. R.S. 22:438, to add language similar to that added to the notice required by La. R.S. 22:433.

In order to provide clarification, as Commissioner, I hereby revise and reissue Advisory Letter 2018-05 to state that La. R.S. 22:438(B) was not amended by Act 7 of the 2018 regular session. Accordingly, no new Form 438 is required at renewal of an existing property and casualty surplus lines policy unless there is a change of the surplus lines insurer.

Please take notice that any licensed surplus lines broker that procures a new personal lines policy with a surplus lines insurer on or after January 1, 2019 shall use the revised Form 438 to comply with La. R.S. 22:438. The revised Form 438 is available on the LDI website ([www.lidi.la.gov](http://www.lidi.la.gov)), and shall replace the acknowledgement form previously issued by the Department.

Please note, Directive 110A and Form 1263.1, issued October 11, 1993, are outdated and are hereby rescinded. Bulletin No. 2013-06 was rescinded when Advisory Letter 2018-05 was issued, and the form issued with Bulletin 2013-06 was also rescinded.

Questions regarding Advisory Letter 2018-05 as revised and reissued should be directed to either Warren Byrd, Deputy Commissioner, at (225) 342-5203 or electronically at [warren.byrd@ldi.la.gov](mailto:warren.byrd@ldi.la.gov), or to Thomas Coco, Office of Management & Finance, at (225) 342-1012 or electronically at [tommy.coco@ldi.la.gov](mailto:tommy.coco@ldi.la.gov).

Baton Rouge, Louisiana, this 30<sup>th</sup> day of January, 2019.



---

JAMES J. DONELON  
COMMISSIONER OF INSURANCE

LOUISIANA DEPARTMENT OF INSURANCE

LA. R.S. 22:438 FORM

ACKNOWLEDGEMENT OF APPLICANT FOR PERSONAL LINES AND  
HEALTH AND ACCIDENT INSURANCE COVERAGE IN THE SURPLUS LINES MARKET

I am applying for personal lines or health and accident insurance coverage in the surplus lines market. By placing my initials on the four (4) statements below, and dating and signing this form, I hereby acknowledge the following in accordance with La. R.S. 22:438, to wit:

\_\_\_\_\_ The insurance may be placed with an approved unauthorized insurer or  
Initial eligible unauthorized insurer.

\_\_\_\_\_ In the event of insolvency of the insurer, losses shall not be paid by the  
Initial Louisiana Insurance Guaranty Association or the Louisiana Life and Health  
Insurance Guaranty Association.

\_\_\_\_\_ I expressly authorize the procurement of surplus lines coverage.  
Initial

\_\_\_\_\_ Any surplus lines coverage shall be procured through a duly licensed surplus  
Initial lines broker.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Printed Name of Applicant

\_\_\_\_\_  
Date

Name of Insurance Producer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

This form shall be maintained by the surplus lines broker.

NOTICE:  
The language and format of this Form shall not be altered.

Revised: December 27, 2018