

Understanding New York excess-line policies

What is an excess-line (or surplus-lines) policy?

It means a policy written by an insurance company that is not authorized (not licensed) in the state of New York. While a policy from an unauthorized company may be written legally through an excess-line broker, this transaction places on the policyholder more responsibility for policy negotiation and protection against the insurance company's insolvency.

What is an excess-line broker?

An excess-line broker means a broker specifically licensed to place insurance with an unauthorized insurance company. Excess-line insurance purchased in New York state must include an excess-line broker in the transaction. Generally, your retail broker must procure the policy through a wholesale broker (licensed as an excess-line broker) that provides access to the excess-line market.

Is an excess-line company less safe than other companies?

No. An excess-line company must meet the same financial standards as an authorized insurance company. The Department of Financial Services is not monitoring the company's financial condition on an ongoing basis, although qualifying standards must be maintained to remain on the list of unauthorized insurance companies that may transact excess-line insurance in New York state.

For your protection, significant oversight is achieved through other means. Regulators in the jurisdiction where the company is domiciled examine the company's financial records, as well as various independent agencies, such as A.M. Best. Also, excess-line brokers are required by law to exercise care in selecting an unauthorized insurance company to provide the coverage. In their endeavor to protect your best interests, brokers are assisted by the Insurance Association of New York.

Isn't it more state-protected for policyholders to purchase from a company licensed in their state?

Not necessarily. Insurance companies licensed in your state are authorized to write policies for risks that are authorized in New York. If there is a significant amount of business for policyholders insured by an unauthorized company, the lack of insolvency protection must be considered when making the purchase decision. Nevertheless, placement with a financially sound excess-line insurance company may be more prudent than placement with an authorized insurance company that is financially impaired.

Why would my broker offer me an excess-line policy?

There are several reasons why it may be necessary to look for coverage in the excess-line market. First, the risk of loss may be too great for acceptance by regular markets. Second, the risk may be too little understood by regular markets to select and price the risk appropriately. Third, there may be no

other way to obtain exclusive coverage for a particular risk. Nevertheless, placement in the excess-line market is considered a last resort, when authorized insurance companies have not been able to provide your insurance coverage. Refusal of coverage can be made with your insurance company, three declinations from authorized companies usually will be required, unless the type of risk is one that has been placed on the Department of Financial Services' "export list"—a list of risks assumed to be difficult to place with authorized companies.

What should I know about forms and rates used by an excess-line company?

An excess-line company is exempt from the laws requiring rates and forms to be filed with the Department of Financial Services. This means that forms may vary significantly from standard forms used by authorized insurance companies. The flexibility offered by this freedom from filing can work to the benefit of the policyholder by permitting coverage to be tailored to individual needs. However, reductions in standard coverage may be necessary in order to turn an uninsurable risk into one that is insurable (for example, terrorism other than damage by fire may be excluded). The important thing to remember is that coverage analysis is essential in this market and that insurance companies are more inclined to negotiate policy terms.

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What about adherence to cancellation and nonrenewal laws?

Unlike authorized companies, commercial policies written by excess-line insurance companies are not subject to the New York state cancellation and nonrenewal laws. Consequently, the terms for canceling and nonrenewing the policy must be found in the policy itself. For example, before coverage is bound by the insurance company, you should determine what the minimum-earned premium will be if the policy is canceled a short time later.

Why am I being billed for a New York state tax on my policy?

The 3.6 percent excess-line tax that you see on your bill is paid annually by the excess-line broker to New York state. It serves as a substitute for the franchise tax that would

have been collected from the insurer were it authorized in New York state.

Normally, the policyholder agrees to pay this tax when signing the Total Cost Form, even if the policyholder is a tax-exempt nonprofit organization. The Total Cost Form is a policyholder's agreement with the retail broker to pay designated taxes, fees and fees associated with the policy, as well as with an excess-line insurer.

What other taxes and fees may I be required to pay in specific states? Total Cost Form

NY state fee. With the broker billed amount equal to 0.2% of premiums written per month. This fee is certain services provided by the EIA Association of New York, whose

stamp is required on every excess-line policy sold in the state.

ELANY was founded in 1988 as a nonprofit advisory organization under supervision of the Department of Financial Services. It provides assistance to excess-line brokers in complying with all excess-line laws and regulations. Paramount is the duty to place with those policies written by licensed companies that meet prescribed standards of eligibility.

Inspection fee. When an excess-line broker pays a contractor to perform an inspection of the premises, the fee likely will be passed on to the policyholder.

Service fee. Sometimes, a broker may not receive any fixed commission from the excess-line broker when writing a policy, or the commission rate may be insufficient to cover all the services being provided the policyholder, so it may be necessary to negotiate a service fee to adequately compensate the broker for services rendered.

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