

July 1, 2016

Administrative Letter 2016-05

REVISED 5-25-18

TO: All Companies Licensed to Write Fire and Fire in Combination with Other Coverages Including Policies Providing Homeowners Coverage, Coverage on Owner-Occupied Dwellings, and Coverage for Tenants; and Interested Parties

RE: Mandatory Notices; Withdrawal of Administrative Letter 2015-05

This administrative letter compiles information provided in a previous administrative letter about notices required by a number of statutes when issuing certain property insurance policies and provides guidance as to when and how such notices should be provided. **This letter also reflects the changes made to the statutes referenced below by Chapter 4 of 2016 Acts of the Assembly (House Bill 307), which is effective January 1, 2017. Consequently, the following administrative letter is hereby withdrawn: 2015-05.**

The notices described in this letter are not subject to approval by the Bureau of Insurance (Bureau), and **should not be filed** with the Bureau. Unless otherwise specified in the statute, insurers have flexibility as to the way in which the notice is provided. For example, a stuffer may be used at the time a policy is mailed to an insured, or the notice may be prominently displayed on the application. However, the notice must not be ambiguous or obscure and must be given no later than at the time the new or renewal policy is delivered.¹

Except as noted below, the policies to which the notice requirements identified in this letter apply include all fire policies and fire policies in combination with other coverages, including but not limited to mobile home policies, dwelling fire policies, homeowners' policies, renters' policies, commercial fire policies, commercial package policies providing fire coverage, and master policies providing mortgage force-placed fire coverage that are issued in Virginia. The notice requirements addressed in this letter do **not** apply to surplus lines policies or mutual assessment fire policies, except that the notice required by [Section 38.2-305](#) of the Code of Virginia must be provided when issuing mutual assessment fire policies.

¹ Additional information may be found in the *Common Problems Found During Examinations Identified by the Property and Casualty Market Conduct and Consumer Services Sections* that is located at <http://scc.virginia.gov/boi/laws.aspx>.

Important Information to Policyholders Notice

[Section 38.2-305 B](#) of the Code of Virginia requires that a specific notice be provided with each new or renewal insurance policy, contract, certificate, or evidence of coverage issued to a policyholder, covered person, or enrollee. This notice must read substantially the same as the notice in the Code of Virginia. Examiners frequently find that this notice is not given when policies are renewed or when a renewal certificate is issued. The insurer should ensure that this notice is being given when required. This notice applies to all classes of insurance except those exempted in [§ 38.2-300](#) of the Code of Virginia, and except as specifically noted in [subsection E of § 38.2-305](#) of the Code of Virginia.

Replacement Cost Coverage

[Section 38.2-2118](#) of the Code of Virginia requires every insurer writing new or renewal insurance policies on owner-occupied dwellings and appurtenant structures that have replacement cost provisions to provide a notice with the policy (1) outlining the minimum coverage requirement necessary to make the replacement cost provision fully effective, and (2) the effect on a claim payment of not meeting the minimum coverage requirement.

Functional Replacement Cost Coverage

[Section 38.2-2119 C](#) of the Code of Virginia requires all insurers offering coverage on a functional replacement cost basis to enclose with all **new** business policies a notice printed in boldface type containing the following statement:

Important Notice

The coverage under this policy applies on a functional replacement cost basis which means that under certain conditions, claims may be settled for less than the actual cash value of the property insured.

Coverage for Water that Backs Up Through Sewers and Drains

[Section 38.2-2120](#) of the Code of Virginia provides that any insurer who issues or delivers a **homeowners insurance policy** (including a **tenant's** personal property policy) as defined in [§ 38.2-130](#) of the Code of Virginia in the Commonwealth shall offer, as an option, coverage insuring against loss caused or resulting from water which backs up through sewers or drains. This offer must accompany all new and renewal policies.

Building Ordinance or Law Coverage

[Section 38.2-2124](#) of the Code of Virginia requires any insurer that issues a policy of fire insurance, or fire insurance in combination with other coverage, to provide a written offer of coverage for the repair or replacement of property in accordance with applicable ordinances or laws that regulate construction, repair, or demolition. This offer must accompany all new and renewal policies.

Flood Notice

[Section 38.2-2125](#) of the Code of Virginia requires any insurer that issues a policy of fire insurance or fire insurance in combination with other coverage that excludes coverage for damage due to flood, surface water, waves, tidal water, or any other overflow of a body of water to provide written notice that explicitly states (1) that flood coverage is excluded; (2) that information about flood insurance is available from the insurer, the insurance agent, or the National Flood Insurance Program; and (3) that contents coverage is available on the flood policy for an additional premium. This notice must accompany all new and renewal policies.

Insurance Credit Score Disclosure Notice

Any insurer issuing or delivering a homeowners or tenant policy that uses credit information contained in a consumer report for underwriting, tier placement, or rating an applicant or insured shall disclose, on the insurance application, at the time the application is taken, or at renewal if no previous notice has been given, the information required by [§ 38.2-2126 A 1](#) of the Code of Virginia.

Insurance Credit Score Adverse Action Notice

[Section 38.2-2126 A 2](#) of the Code of Virginia requires insurers that take adverse actions, based in whole or in part, upon credit information to provide notice to applicants or insureds on owner-occupied and tenant residential property policies that the adverse action was based in whole or in part on credit. The notice must either provide a statement of the primary factors or characteristics that were used as the basis for the adverse action, or notify the applicant or insured that he may request such information. For the purposes of § 38.2-2126 of the Code of Virginia, an adverse action is defined as a denial, refusal to renew, or cancellation of, an increase in any charge for or refusal to apply a discount, placement in a less favorable tier, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with underwriting, tier placement, or rating, where the reason for any of these actions is the insured's credit information. If the insurer would have taken the same action(s) had the insured's credit information **not** been a factor, then **no** adverse action has occurred.

Notice of Change in Deductible

[Section 38.2-2127](#) of the Code of Virginia requires an insurer to provide a written notice whenever it unilaterally changes the deductible on a policy written to insure an **owner-occupied dwelling** (homeowners and dwelling fire policies). The notice must (1) state that the deductible has changed and (2) explain how the new deductible will be applied. The law prohibits the insurer from changing the deductible except at renewal. *Insurers should be aware that the law is not limited to changes in the deductible because of the territory or location of the property. For example, if the insurer unilaterally changes the deductible because of the insured's loss history, the notice must be given.*

NOTE: Deductibles may only be unilaterally changed at renewal. Therefore, insurers are prohibited from changing a deductible unilaterally during the policy term, including the 90-day underwriting period once coverage is bound. Where the need arises to make a change in a deductible during the underwriting period, insurers must cancel the policy and offer to write with a different deductible. However, insurers may make changes, such as increasing deductibles or increasing limits, during the underwriting period if the insured agrees to such changes, or if the application, signed by the insured, advises the insured that the deductible may be changed.

Earthquake Notice

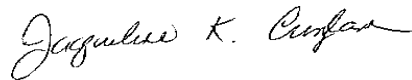
[Section 38.2-2129](#) of the Code of Virginia requires insurers issuing new or renewal policies of fire insurance, or fire insurance in combination with other insurance coverages, which exclude coverage for damage caused by earthquake, to provide a written notice that explicitly states, "earthquake coverage is excluded unless purchased by endorsement." This notice must state that information regarding such coverage is available from the insurer or the agent if earthquake coverage is otherwise available from the insurer. Insurers may use notices that unambiguously set forth the information required by the law even if the language of the notice is not in the precise language that is quoted in the law.

All insurers issuing policies covering fire and fire in combination with other coverages including policies providing homeowners coverage, coverage on owner-occupied dwellings, and coverage for tenants should review this letter and make the changes required by 2016 Acts of the Assembly c. 558 (House Bill 307) by the effective date of the legislation, January 1, 2017.

Questions about this administrative letter should be directed to:

BOI Manager, P&C Market Conduct Section
(804) 371-9826
BureauofInsurance@scc.virginia.gov

Sincerely,



Jacqueline K. Cunningham
Commissioner of Insurance

REVISED 5-25-18: The definition of "adverse action" was amended to reflect decisions of the courts. Several technical corrections were also made.