

April 27, 2017

Matt Mortier, Director and Custodian of Records, Compliance
Bobbie Baca, Director, Property Casualty & Title, Consumer Services
Division of Insurance, Colorado Department of Regulatory Agencies

VIA EMAIL: matt.mortier@state.co.us

Re: Bulletin B.5.28 - Equitable Payment of Claims Resulting from Natural Disasters

Dear Mr. Mortier:

We write with a few recommended modifications and to register our support for the proposed revisions of the Division of Insurance Bulletin B.5.28. Thank you for this opportunity to contribute to this tool.

First, it should include a statement on Colo. Rev. Stat. § 10-4-110.8(11)(a) that for total losses, insurers must offer a *minimum of 30%* of the personal coverage limit without requiring an inventory.¹

Proposed language:

Colorado law requires that in total loss scenarios, insurance companies must offer a minimum of 30% of the contents/personal property coverage limit set forth on the policy's declaration page without requiring the insured to submit a detailed inventory. Insurance companies should, on a case-by-case basis, offer full limits or allow the insured to group items in order to make the claims process both expeditious and fair, given the magnitude of a total loss.

Second, include a statement that Colorado's three-year statute of limitations trumps suit limitations in insurance policies.¹

Proposed language:

Colorado law provides for a three-year statute of limitations to bring an action for breach of contract, which now includes insurance policies. The claim accrues from the time of the breach of contract or the date it should have been discovered by the exercise of reasonable diligence. Prior to the revisions to Colo. Rev. Stat. § 10-4-110.8, many insurers included a statute of limitations in their insurance policies that was shorter than three years – usually one year. This bulletin clarifies that all actions arising on or after May 10, 2013 are subject to a three-year statute of limitations and insurers may not enforce a deadline that is less favorable.

Third, include a more robust statement on why an insurers' use of construction estimating and pricing software such as Xactimate™ may not adequately reflect the insured property.

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Current proposed language with additions:

~~While the use of an estimating software programs may be a tool~~ **has become a common way of** determining the cost of repairing or rebuilding a dwelling. The insurer should consider other factors that may not be included in the estimating program. Specifically, the slope **and building grade** of the land ~~building grade of the dwelling,~~ *the specific attributes of the insured home,*¹ and availability of labor and materials. **These factors will** generally ~~will~~ impact the actual cost to rebuild. *In addition, insurers using such software estimation programs must adjust pricing to reflect the specific region where the insured property is located, taking into account local conditions that may affect pricing.* An insurer's refusal to consider additional information related to the cost to rebuild a particular dwelling may constitute a violation of 10-3-1104 (1) (h) (IV)...

About United Policyholders

United Policyholders ("UP") is a non-profit organization that informs, helps and speaks for insurance consumers in Colorado and across the nation. UP does not sell insurance or accept funding from insurance companies. At www.uphelp.org, UP offers a variety of resources and tools for making good decisions when buying insurance and resolving claim and coverage disputes. UP has been engaged with public officials in El Paso, Boulder and Larimer counties and the Division of Insurance since 2010 when we began providing local recovery support services to residents and businesses after a series of wildfires and flooding events. Loss adjustment, construction and financing delays during the recovery process led UP to help draft and support the Colorado Homeowner's Insurance Act of 2013 (H.B. 13-1225, signed by Governor Hickenlooper on May 5, 2013, now codified at Colo. Rev. Stat. § 10-4-110.8 *et seq.*).

Thank you for your time and consideration.

Sincerely,



Amy Bach, Esq., Executive Director
amy.bach@uphelp.org

¹ Colo. Rev. Stat. § 10-4-110.8 (11)(a): In the event of a total loss of the contents of an owner-occupied primary residence that was furnished at the time of loss, the insurer shall offer the policyholder a minimum of thirty percent, or a larger percent by mutual agreement of the policyholder and insurer, of the value of the contents coverage reflected in the declaration page of the homeowner's policy without requiring submittal of a written inventory of the contents. In order to receive up to the full value of the contents coverage, the policyholder may accept the offer under this paragraph (a) and submit a written inventory as required by the insurer.

² *Id.* at (12)(a): Notwithstanding any provision of a homeowner's insurance policy that requires the policyholder to file suit against the insurer, in the case of any dispute, within a period of time that is shorter than required by the applicable statute of limitations provided by law. A homeowner may file such a suit within the period of time allowed by the applicable statute of limitations; except that this paragraph (a): (I) Does not revive a cause of action that, as of May 10, 2013, has already been barred by contract; and (II) Applies only to a cause of action that, as of May 10, 2013, has not been barred by contract. (b) On and after Jan. 1, 2014, an insurer shall not issue or renew a homeowner's insurance policy that requires the policyholder to file suit against the insurer, in the case of any dispute, within a period of time that is shorter than required by the applicable statute of limitations provided by law.

³ Software programs are often default to tract home attributes that fail to account for upgrades that the home may have had. We believe that this is one of the most significant factors impacting disputes over the cost to rebuild.