



April 25, 2024

Commissioner Michael Conway
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver CO 80202

& Sent Via Email:
DORA_Ins_RulesandRecords@state.co.us

RE: Comments on Proposed Regulation 5-1-XX Concerning Homeowner Coverage Disclosure Requirements, 3 CCR 702-5

Dear Commissioner:

On behalf of United Policyholders,¹ (“UP”) I write to request one significant modification to Proposed Regulation 5-1-XX Concerning Homeowner Coverage Disclosure Requirements, 3 CCR 702-5, and thank you and your staff for your efforts to assist and protect property insurance consumers in Colorado and contribute to improving disaster resiliency and recovery.

We recommend the following bolded alternative language for Section 5 (B) of the proposed regulation:

Proposed alternative language

If a policyholder declines to purchase extended replacement-cost coverage and/or law and ordinance coverage, the insurer or its agent shall obtain their signature to that effect on a contemporaneously dated declination form, and include the following in bold, 12-point font on the policy declarations page:

¹ United Policyholders (“UP”) is a non-profit organization that has been informing, helping, and speaking for insurance consumers across the United States since 1991. UP promotes fair insurance practices and disaster resiliency and recovery. UP is funded by donations, grants and volunteer labor.

“YOU HAVE ELECTED TO NOT PURCHASE ONE OR MORE OF THE AVAILABLE COVERAGES THAT PROVIDE ADDITIONAL PROTECTION IN THE EVENT OF A LOSS, WHICH MAY INCLUDE INCREASED DWELLING COVERAGE LIMITS SUCH AS EXTENDED REPLACEMENT COST AND LAW AND ORDINANCE COVERAGE. FOR ADDITIONAL INFORMATION REFER TO THE NOTIFICATION INCLUDED IN YOUR NEW OR RENEWAL POLICY.”

The insurer or its agent shall maintain a written record that Extended Replacement Cost and Law and Ordinance coverages were offered, and, where applicable, the signed declination form, and shall make such records promptly available to the insured upon request.”

Reasoning

Our proposed addition of requiring a signed declination form will help advance the original goal of the bill giving rise to the proposed regulation: Given the dynamics at the point of sale, especially today, we need to ensure the insurer or its agent clearly make these offers of important additional coverages. And we need to make it clear to the consumer that Colorado officials want them to consider the extra protection for their own benefit. It should be made clear to the consumer that the offers are not an agent/insurer trying to upsell them more insurance than they need, but an attempt to protect them from being underinsured.

UP has been helping Colorado residents recover from and be prepared for wildfires, floods, wind and hail storms and other adverse events since 2010.

Through our Roadmap to Preparedness and Advocacy Action programs, UP is also doing outreach, education and advocacy aimed at helping Colorado property owners right-size their insurance safety nets by being savvy and shopping for adequate coverage, not just price, and navigate the current property insurance

marketplace where non-renewals are becoming common, options and coverage are shrinking, and premiums are increasing.

Because an average of two thirds of wildfire-impacted households face a second disaster after their loss upon finding out their dwellings were significantly underinsured, UP was actively engaged in supporting the legislation underlying this regulation, as well as previous measures that sought to solve the problem. It is imperative that insurers do a better job of insuring homes to value and agents and brokers more proactively guide consumers on available options that will secure their safety nets.

Due to global reinsurance trends, predictive technology, climate change, inflation and other factors, it is becoming increasingly common for Colorado property owners to get dropped by their insurers when their current policies expire and to have to shop for a replacement policy. UP offers guidance on this topic².

There are two important options a consumer can buy to avoid being underinsured: Extended Replacement Cost coverage that increases their dwelling coverage and Law and Ordinance coverage for upgrades required to comply with current building codes. Buying those options significantly reduces the chances of a home being underinsured. The goal of HB23-1174 was to make sure those options get offered and explained at the point of sale or renewal. The bill and these regs will only work to solve the underinsurance problem if insurers, agents and brokers proactively and clearly explain to consumers how important the additional coverages are in the event of a serious or total loss.

UP has heard from many consumers who did not recall being offered these extra coverages or understand their when they bought or renewed their policy. This has led to numerous disputes about whether they were offered. This has been the case as to the current CO requirement related to 24 months of Additional Living Expense coverage. Absent a signed declination of coverage form, disputes as to whether or not they were offered often end up in litigation.

² <https://uphelp.org/buying-tips/dropped-by-your-home-insurer-information-for-colorado-residents/>

We saw in the aftermath of the Marshall Fire that many homeowners were surprised to learn they only had 12 months of ALE and no knowledge they could have opted for 24 months of coverage – even though the legislature had required insurers to offer 24. This lack of transparency at point of sale for ALE coverage was such a point of concern for the Department that the Insurance Commissioner issued two Open Letters to insurers requesting they honor 24 months of ALE coverage.

Conclusion

Due to the complicated and opaque nature of the product, insurance consumers are heavily reliant on insurance professionals to put a policy in place that will protect their assets. Given consumers’ understandable price sensitivity, and with prices rising today, it is challenging for agents and brokers to push extra coverages – but it is the law in Colorado that they do, and for good reason. These additional options are important and property owners deserve to hear that from professionals that hold themselves out as insurance experts. It is essential that this regulation require preparation and maintenance of a clear record of the date the options were offered to the consumer and whether they rejected or accepted them.

For the above reasons, United Policyholders supports but requests the addition of a required signed declination form to Proposed Regulation 5-1-XX.

Sincerely,



Amy Bach
Executive Director