

8/30/12

Key Colorado State Laws AND Regulations Effecting Homeowners Insurance

TITLE 10. INSURANCE
GENERAL PROVISIONS
ARTICLE 1. GENERAL PROVISIONS
PART 1. GENERAL PROVISIONS

C.R.S. 10-1-101 (2012)

10-1-101. Legislative declaration

The general assembly finds and declares that the purpose of this title is to promote the public welfare by regulating insurance to the end that insurance rates shall not be excessive, inadequate, or unfairly discriminatory, to give consumers thereof the greatest choice of policies at the most reasonable cost possible, to permit and encourage open competition between insurers on a sound financial basis, and to avoid regulation of insurance rates except under circumstances specifically authorized under the provisions of this title. Such policy requires that all persons having to do with insurance services to the public be at all times actuated by good faith in everything pertaining thereto, abstain from deceptive or misleading practices, and keep, observe, and practice the principles of law and equity in all matters pertaining to such business.

10-4-110.6. Homeowner's insurance - definition

For the purposes of this article, "homeowner's insurance" means insurance that covers damage or loss to all types of homes, including, but not limited to, site-built homes, manufactured homes, factory-built homes, and mobile homes.

10-4-110.7. Cancellation or nonrenewal - homeowner's insurance policies

- (1) (a) If an insurer issues a binder of insurance during a period in which the insurer assesses the risk related to an individual's real and personal property for the purposes of homeowner's insurance, the insurer shall provide notice to the potential insured that the documents are only a binder and subject to cancellation.
- (b) The commissioner may promulgate a rule or issue a bulletin concerning disclosure requirements for a binder of insurance for homeowner's insurance.
- (2) (a) If an insurer uses underwriting criteria based on an individual's credit score, the claims history of the property, or the claims history of the applicant, the insurer shall notify the applicant of the use of such criteria during the application process.

(b) If an insurer uses claims experience for the property and such claims history results in an adverse action to the applicant or policyholder, the insurer shall disclose to the applicant or policyholder the specific claim information that resulted in the adverse action.

(3) No insurer shall cancel or refuse to renew a policy of homeowner's insurance unless such insurer mails, by first-class mail to the named insured, at the last address shown in the insurer's records, at least thirty days in advance, a notice of its intended action pursuant to [section 10-4-110](#) that specifically states the reasons for proposing to take such action pursuant to [section 10-4-110](#); except that, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reasons therefor shall be given.

(4) An insurer offering homeowner's insurance in this state shall file with the commissioner the underwriting methodologies used by the insurer. Such underwriting methodologies are not public records and are exempted from article 72 of title 24, C.R.S., and are proprietary and not subject to public examination; except that the commissioner may use information from the underwriting methodologies filed pursuant to this subsection (4) that does not identify a specific insurer for consumer information publications concerning homeowner's insurance.

(5) If an insurer issues a binder or a policy of insurance during a period in which the insurer assesses the risk related to an individual's real and personal property for the purposes of homeowner's insurance, the insurer shall provide notice to the potential insured that the documents are conditional and that the insurer has thirty business days, commencing on the effective date of the conditional coverage, to evaluate the issuance of a policy for homeowner's insurance. If the insurer refuses to issue a policy of homeowner's insurance or cancels a conditional policy that has been issued as of an effective date within this thirty-business-day period, the insurer shall notify the homeowner of the insurer's decision. If, prior to the expiration of the thirty-business-day period, the insurer obtains information showing an articulable and reasonable basis on which the insurer might be justified in cancelling coverage and the insurer believes that further investigation or repair of the property is necessary, the thirty-business-day period may be extended. The insurer shall complete any inspection associated with the underwriting of the new property within the thirty-business-day period.

10-4-110.8. Homeowner's insurance - prohibited practices - definitions

(1) An insurer may not cancel or fail to renew coverage of an insured solely because the insured inquires about coverage for homeowner's insurance and the inquiry is not related to an actual claim to the property insured.

(2) An insurer may only provide information regarding claims to an entity that compiles or monitors personal claim or loss experience shared by insurers for underwriting or rating purposes.

(3) For the purposes of this section, unless the context otherwise requires:

(a) "Claim" includes a demand for payment of a benefit by the insured, the payment of a covered

benefit by an insurer, a loss reserve established by the insurer, a loss adjustment expense incurred by the insurer, or a payment made to the insured.

(b) "Inquiry" means a request for information regarding the terms, conditions, or coverages afforded under an insurance contract.

(4) Every insurer issuing a policy of homeowner's insurance shall comply with [section 10-3-1104 \(1\)\(h\)](#) and all other provisions of part 11 of article 3 of this title.

(5) (a) In a common interest community, as defined in [section 38-33.3-103 \(8\)](#), C.R.S., a unit owner may file a claim against the policy of the unit owner's association to the same extent, and with the same effect, as if the unit owner were a named insured if the following conditions are met:

(I) The unit owner has contacted the executive board or the association's managing agent in writing, and in accordance with any applicable association policies or procedures for owner-initiated insurance claims, regarding the subject matter of the claim;

(II) The unit owner has given the association at least fifteen days to respond in writing, and, if so requested, has given the association's agent a reasonable opportunity to inspect the damage; and

(III) The subject matter of the claim falls within the association's insurance responsibilities.

(b) The association's insurer, when determining premiums to be charged to the association, shall not take into account any request by a unit owner for a clarification of coverage.

10-4-110.9. Fire insurance - issuance and renewal of policies within federally designated disaster areas

(1) No insurer shall refuse to issue a fire insurance policy for any property located within a federally designated disaster area, so designated because of wildfire, where such refusal is based on such property's zip code, county location, or distance from any wildfire. This section shall not apply to property that is located within an immediately threatened area as designated by the appropriate state, local, or federal official.

(2) An insurer shall not refuse to renew an existing fire insurance policy for property that is within an area that has been declared a federally designated disaster area for any reason that is related to wildfire. As a condition of such renewal, an insurer may require a property owner to take reasonable actions to reduce the risk of fire to such property.

(3) If a property owner refinances a mortgage on an insured property that falls within an area that has been declared a federally designated disaster area because of wildfire, the insurer of such property shall continue to provide coverage for the remaining term of the existing fire insurance policy, adjusted as required by the mortgage lender for any increase or decrease in the value of such property. Such required adjustment shall not conflict with the requirements of [section 10-4-114](#).

(4) The commissioner of insurance may adopt rules as necessary for implementation of this section.

10-4-112. Property damage - time of payment

(1) After an insurer has issued a draft or check to a loss payee and the insured under the terms of a property damage policy for the repair of property damage to a one- to four-family dwelling unit or an owner-operated commercial property when the mortgage or deed of trust secures a debt not in excess of two hundred thousand dollars, such draft or check, if satisfactory in an amount to the insured, shall be properly endorsed by the insured in favor of the loss payee and delivered to the loss payee.

(2) If the draft or check is for the full amount of the loss and is in an amount of one thousand dollars or less, the loss payee shall return the draft or check, properly endorsed, to the insured within ten days after the date of its receipt by the loss payee, unless the evidence of the debt or the instrument given as security for the debt is in default.

(3) If the draft or check is in an amount in excess of one thousand dollars, or is a partial payment on a loss in an amount in excess of one thousand dollars, the loss payee shall either:

(a) Send the draft or check, properly endorsed, to the insured within ten days after the date of its receipt by the loss payee;

(b) Process the draft or check for collection or deposit, except as provided in paragraph (c) of this subsection (3). Any loss payee holding funds under this paragraph (b), upon its approval of contracts or plans for the completion of repairs, shall make reasonable advances or progress payments as appropriate to be applied to the completion of repairs and shall be entitled to require appropriate lien waivers and to inspect the repairs during the progress of the repairs. The loss payee shall be entitled to retain up to fifteen percent of the amount of the draft or check as retainage until completion and inspection, satisfactory to the insured, of the work.

(c) Process the draft or check for collection or deposit. Any loss payee holding funds under this paragraph (c) shall hold such funds for the payment of the cost of repairs unless any one of the following circumstances is present:

(I) The evidence of the debt or the instrument given as security for the debt is in default. If the default is a result of failure to make payments in a timely manner as required by the evidence of debt or the instrument securing the debt, the loss payee may apply an amount of such proceeds sufficient to cure the default, including taxes, penalties, and late charges, and hold the balance for the cost of repairs, pursuant to paragraph (b) of this subsection (3).

(II) The restoration of the property would violate local, state, or federal laws or regulations;

(III) The property cannot reasonably be restored to its condition prior to the loss at a cost of not to exceed the amount of the draft, reduced by an amount applied to cure a default pursuant to subparagraph (I) of this paragraph (c).

(d) Advise the insurer and insured that it is not satisfied with the amount of the draft or check and pursue a claim for the loss under the terms of the policy. Upon such notification the insured shall not be precluded from pursuing, either singly or jointly with the loss payee, a claim for the loss under the terms of the policy.

(4) Neither approval of contracts, plans for the completion of repairs, nor inspection of the work shall make the loss payee liable to any person for any improper, negligent, or unsatisfactory repairs.

10-4-120. Unfair or discriminatory trade practices - legislative declaration

(1) (a) The general assembly determines that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest-quality commodities and services, and the best environment for democratic and social institutions. Therefore, the right of the individual to choose a repair business is a matter of statewide concern.

(b) The general assembly declares that the purposes of this section are to:

(I) Safeguard the public against monopolies, trusts, and market barriers;

(II) Foster and encourage competition by prohibiting unfair and discriminatory insurance practices that impede fair and honest competition;

(III) Ensure that all consumers benefit from competition and the expansion of choices in the marketplace; and

(IV) Enhance Colorado's economic development.

(c) This section shall be liberally construed so that its beneficial purposes may be served.

(2) An insurer or its agent that issues or renews a policy that insures real or personal property shall not:

(a) Directly or indirectly require that appraisals or repairs to the property be made or not be made by a specified repair business;

(b) Represent to a beneficiary or claimant who is making a claim under a policy that the use of, or the failure to use, a particular repair business may result in the nonpayment or delayed payment of a claim;

(c) Intimidate, coerce, threaten, or induce by incentive a beneficiary or claimant to use a particular repair business for repairs; except that an inducement by incentive does not include warranty or guaranty repairs;

(d) Contract with a person to manage, handle, or arrange insurance repair work or to act as an agent for the insurer if:

- (I) The contract requires a particular repair business to do claims work for the insurer at a price established by the insurer; and
 - (II) The person retains a percentage of any compensation paid by the insurer;
 - (e) Use disincentives to discourage a beneficiary or claimant from using a particular repair business; except that a disincentive does not include warranty or guaranty repairs;
 - (f) Solicit or accept a referral fee or compensation in exchange for referring the beneficiary or claimant to a repair facility;
 - (g) Require the beneficiary or claimant to travel an unreasonable distance to choose a repair facility;
 - (h) Misinform a beneficiary or claimant to induce the use of a particular repair business; or
 - (i) In the settlement of a liability claim by a third party against a beneficiary or claimant for property damage claimed by the third party, require a third-party claimant to have repairs done by a particular repair business.
- (3) An insurer or its agent that issues or renews a policy that insures real or personal property shall:
- (a) Supply the beneficiary or claimant with a copy of the estimate upon which the settlement is based, when partial losses are settled on the basis of an estimate prepared by or for the insurer;
 - (b) Require that any estimate prepared by or for the insurer covering damages that are visible or evident at the time of inspection is adequate to restore the property within a reasonable time to its condition before the loss, in accordance with applicable policy provisions;
 - (c) Pay for repair services and products based on a prevailing competitive price, as established by competitive bids, generally accepted insurer-based methodology, or market surveys that determine a fair and reasonable market price for similar services;
 - (d) Orally or in writing disclose to a beneficiary or claimant that the beneficiary or claimant may freely choose any repair business;
 - (e) Assume all reasonable costs sufficient to pay for the beneficiary's or claimant's repairs including materials or parts, less any applicable deductible or reduction for comparative negligence;
 - (f) Promptly pay the cost of property repair services and products from any repair facility location that is within a reasonable distance, less any applicable deductible amount payable by the beneficiary or claimant according to the terms of the insurance policy, at no less than the prevailing competitive market price in the same geographic area; and
 - (g) Disclose to the beneficiary or claimant any ownership interest in, or ownership by or through an affiliation with, a repair business recommended by the insurer when the recommendation is made.

(4) An insurer is not required to furnish the notices required by this section more than once to each beneficiary or claimant for each claim.

(5) A beneficiary, claimant, or repair business may submit a written, documented complaint to the commissioner alleging a violation of this section.

(6) Notwithstanding any other provision of this section, an insurer or its agent shall inform the beneficiary or claimant that he or she may select any repair business of his or her choosing, and, if the insurer chooses, the insurer may also inform the beneficiary or claimant that the insurer can provide a list of repair businesses for the beneficiary or claimant to consider.

Colorado Regulations Concerning Homeowner's Insurance

Regulation 5-1-17 AVAILABILITY OF FIRE INSURANCE DURING WILDFIRES

2329163 Section 1 Authority

2329164 This regulation is promulgated under the authority of § § 10-1-109 and 10-4-110.9(4), C.R.S.

2329165 Section 2 Scope and Purpose

2329166 The purpose of this regulation is to provide a rule to implement standards concerning the availability of fire insurance during wildfires within a federally designated disaster area in Colorado.

2329167 Section 3 Applicability

2329168 This rule shall apply to all insurers authorized to write property insurance in the state of Colorado.

2329169 Section 4 Definitions

2329170 A. "Fire insurance policy" means a policy of insurance on real or personal property, which includes non-commercial dwelling fire, homeowners, tenant homeowners, or mobile homeowners.

2329171 B. "Immediately threatened area" means an area located within a federally designated disaster area, because of wildfires, based on such property's zip code, county location, or distance from any wildfire. Absent a written determination by a government official, or a determination otherwise published by a government official, of the area defined as an immediately threatened area, such term shall mean the area under a lawful order to evacuate or an area under a lawful pre-evacuation order.

2329172 C. "Reasonable actions to reduce the risk of fire" means underwriting requirements, which may include, but are not limited to:

2329173 1. Requiring the property owner to provide a defensible space around the structure;

2329174 2. Requiring the property owner to clean out debris and leaves from gutters and downspouts as well as from beneath decks and porches; and

2329175 3. Adding or enhancing fire suppression systems.

2329176 Section 5 Rules

2329177 A. Insurers shall not refuse to issue a fire insurance policy for a property based on the property's zip code, county location, or distance from any wildfire, unless the property is located in an immediately threatened area.

2329178 B. Insurers shall not refuse to renew a fire insurance policy for a property located within an immediately threatened area for any reason that is related to existing wildfires.

2329179 C. Insurers, as a condition of renewal, may require a property owner to take reasonable actions to reduce the risk of fire to such property. Such reasonable actions to reduce the risk of fire shall be specified in the insurer's written underwriting guidelines.

2329180 Section 6 Severability

2329181 If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

2329182 Section 7 Enforcement

2329183 Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Regulation 5-1-14 PENALTIES FOR FAILURE TO PROMPTLY ADDRESS PROPERTY AND CASUALTY FIRST PARTY CLAIMS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance pursuant to §§ 10-1-109 and 10-3-1110, C.R.S.

2329084 Section 2 Scope and Purpose

2329085 The purpose of this regulation is to describe the procedure and circumstances under which penalties will be imposed for failure to make timely decisions and/or payment on first party claims.

2329086 Section 3 Applicability

2329087 This rule shall apply to all insurers authorized to write property and casualty insurance in the state of Colorado.

2329088 Section 4 Rules

2329089 A. Timely Decisions and Payment of Benefits

2329090 1. Penalties

2329091 a. All insurers authorized to write property and casualty insurance policies in Colorado, shall make a decision on claims and/or pay benefits due under the policy within sixty (60) days after receipt

of a valid and complete claim unless there is a reasonable dispute between the parties concerning such claim, and provided the insured has complied with the terms and conditions of the policy of insurance.

2329092 b. If an insurer fails to make a decision and/or pay benefits due under the policy within sixty (60) days after a valid and complete claim has been received, and there is not a reasonable dispute between the parties, and the insured has complied with the terms and conditions of the policy of insurance, the Commissioner of Insurance may impose the following penalties to be paid by the insurer to the insured:

2329093 (1) If the claim is \$100.00 or less, the penalty shall not be more than \$20.00;

2329094 (2) If the claim is more than \$100.00, the penalty shall be 8 percent annual interest on the amount of benefits due, computed from the latest of the time a valid and complete claim is received, the reasonable dispute was resolved, or the insured complied with the terms and conditions of the policy, until the time the benefits due are paid by the insurer.

2329095 c. In addition to such penalties payable to the claimant, the Commissioner of Insurance, after notice and hearing, may assess a civil penalty against any insurer of \$100.00 per day for each day benefit payments are delayed more than sixty (60) days after a valid and complete filing of the claim unless there is a reasonable dispute between the parties concerning such claim.

2329096 2. Conditions

2329097 a. A valid and complete claim is deemed received by the insurer when:

2329098 (1) All information and documents necessary to prove the insured's claim have been received by the insurer;

2329099 (2) A reasonable investigation of the information submitted has been completed by the insurer, in compliance with §10-3-1104, C.R.S.;

2329100 (3) The terms and conditions of the policy have been complied with by the insured;

2329101 (4) Coverage under the policy for the insured has been established for the claim submitted;

2329102 (5) There are no indicators on the claim requiring additional investigation before a decision can be made; and/or

2329103 (6) All repairs have been satisfactorily completed and the insured has given authorization to pay; and/or

2329104 (7) Negotiations or appraisals to determine the value of the claim have been completed; and/or

2329105 (8) Any litigation on the claim has been finally and fully adjudicated.

2329106 b. A reasonable dispute may include, but is not limited to:

2329107 (1) Information necessary to make a decision on the claim has not been submitted or obtained;

2329108 (2) Conflicting information is submitted or obtained and additional investigation is necessary;

2329109 (3) The insured is not in compliance with the terms and conditions of the policy;

2329110 (4) Coverage under the policy for the loss claimed has not been determined;

2329111 (5) Indicators are present in the application or submission of the claim and additional investigation is necessary;

2329112 (6) Litigation is commenced on the claim; or

2329113 (7) Negotiations or appraisals are in process to determine the value of a claim.

2329114 3. A good faith offer by the insurer to the insured within sixty (60) days after the receipt of a valid and complete claim satisfies the requirements under this regulation.

2329115 4. If claims for benefits are processed by a third party administrator or other entity acting on behalf of the insurer, or if the insured is represented by a third party, the failure of the third party to comply with the terms of the policy or this regulation, shall be the failure of the insurer or insured respectively.

2329116 5. In all actions initiated under this regulation, the insured shall have the burden of proving to the Commissioner of Insurance that he/she submitted a valid and complete claim to the insurer.

2329117 6. The insurer shall have the burden of proving to the Commissioner of Insurance that a reasonable dispute existed.

2329118 7. If it is determined that benefits are due to the insured, the insurer must issue a payment to the insured within sixty (60) days of a valid and complete claim being received, if all the conditions in the definition herein are met.

2329119 8. In the event of a significant catastrophe resulting in multiple claims, an insurer may notify the Commissioner of Insurance of the nature and extent of the catastrophe and request a deviation or exemption from this regulation.

2329120 B. Reasonable Investigation

2329121 1. The Commissioner of Insurance recognizes that the scope of an investigation can be determined, in part, to be reasonable based on the terms and conditions of the policy and the facts and circumstances of each claim. It may include, but is not limited to: