

REGULATION I-79-2 (Revised Eff. 7/1/18), Fair Claims Practices

(This regulation revises and replaces Regulation I-79-2, dated September 1, 1979.)

SECTION 1. PURPOSE

8 V.S.A. § 4724(9) of the Insurance Trade Practices Act (8 V.S.A. §§ 4721-4726) prohibits insurers doing business in Vermont from engaging in unfair claims settlement practices and provides that if any insurer performs any of the acts or practices prescribed by that subsection with such frequency as to indicate a general business practice, such acts or practices shall constitute an unfair or deceptive act or practice in the business of insurance. This Regulation is intended to supplement 8 V.S.A. § 4724(9) for the purpose of protecting the interests of the public and to insure prompt and equitable claim handling by establishing minimum standards for all types of claim settlements.

SECTION 2. AUTHORITY

This regulation is issued pursuant to the authority granted to the Commissioner under 8 V.S.A. §§ 10, 11, 15 and 4724.

SECTION 3. SCOPE

This Regulation defines certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute an unfair claim settlement practice. This Regulation applies to all persons and all insurance policies and contracts except policies of Workers' Compensation, Title insurance and Surety. This Regulation is not exclusive, and any other acts, not herein specified, may also be deemed a violation of 8 V.S.A § 4724 of the

Insurance Trade Practices Act.

SECTION 4. DEFINITIONS

The definitions “insurance policy” and “insurance contract” contained in 8 V.S.A. § 4722 of the Insurance Trade Practices Act shall apply to this Regulation and, in addition, where used in this Regulation:

- A. "Agent" means any person authorized to represent an insurer with respect to a claim;
- B. "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and any member of the claimant's immediate family designated by the claimant;
- C. "First Party Claimant" means any person asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract;
- D. "Third Party Claimant" means any person asserting a claim against any other person or the interests insured under an insurance policy or insurance contract;
- E. "Insurer" means a person who issues any insurance policy or insurance contract in this State;
- F. "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract; and
- G. “Person” means any individual, association, organization, partnership, business, trust, corporation or other entity.

SECTION 5. NOTIFICATION TIME REQUIREMENTS

A. An insurer or its agent who has claim adjusting authority shall mail or orally acknowledge receipt of the claim notice directly to the claimant, within ten (10) business days. If the acknowledgment is made orally, notation of the acknowledgment shall be recorded in the insurer's record or file. Notification given to an agent of an insurer shall be notification to the insurer.

B. An insurer shall make appropriate written or oral reply within ten (10) business days to any communication from claimant which specifically addresses itself to questions raised by claimant.

C. An insurer who receives an inquiry from the Department of Financial Regulation respecting a claim shall furnish a response within fifteen (15) business days addressing itself to the specifics of the inquiry.

SECTION 6. TIME LIMIT FOR CLAIM SETTLEMENTS

A. Within fifteen (15) business days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial.

The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

B. If a claim is denied for reasons other than those described in paragraph A. and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.

C. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen (15) business days after receipt of

the proofs of loss giving the reasons more time is needed. Claims governed by 8 V.S.A § 3868 are not subject to this subsection. If the insurer needs more time to determine whether a third party claim should be accepted or denied, it shall so notify the third party claimant within thirty (30) business days after receipt of notice of claim giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, thirty (30) business days from the date of the initial notification and every thirty (30) business days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation. The provisions of this section shall not apply upon filing of suit by first party claimant or employment of legal counsel by third party claimant.

D. Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

E. Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty (30) business days and to third party claimants sixty (60) business days before the date on which such time limit may expire.

F. No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

G. After settlement has been agreed upon, insurer shall mail payment in amount agreed to claimant and/or loss payee within ten (10) business days, unless a further delay is mandated

under an order by a court of competent jurisdiction or required by law.

SECTION 7. STANDARDS FOR FAIR & EQUITABLE SETTLEMENTS

- A. If an insurer denies a claim in whole or in part, it shall provide claimant with appropriate reasons therefore, including reference to applicable policy provisions, conditions or exclusions.
- B. All claim payments shall include an appropriate explanation of the basis of the payment (example, full explanation of all deductions for depreciations, deductibles or coinsurance).
- C. All insurers who do not maintain a claims office or offices in Vermont shall provide claimant with toll-free telephone number of the representative handling the claim for claimant's retention.
- D. Where liability has become reasonably clear, an insurer is prohibited from withholding payment under one portion of a liability claim in order to influence settlement of another portion of a liability claim.

SECTION 8. STANDARDS FOR SETTLEMENTS OF PROPERTY AND/OR PHYSICAL DAMAGE CLAIMS

A. Adjustment of Partial Losses Applicable to Physical Damage Claims

- 1. If requested, insurer shall furnish claimant a copy of the completed appraisal or estimate specifying all deductions.
- 2. If the claimant chooses to select repairer, insurer shall make every reasonable effort to reach an agreed price with the repairer.
- 3. If insurer insists that repairs be done by a specific repairer, said insurer shall guarantee all work performed by said repairer.
- 4. Insurers shall not require a claimant to travel unreasonably either to inspect or to obtain a

replacement of the damaged property or motor vehicle or to obtain a repair estimate.

5. Insurer shall advise claimant of and pay for all known hidden damages attributable to the accident or loss.

6. **Matching of Exterior and Interior Partial Losses.** When a covered loss requires the replacement of an item or items and the replacement item or items do not match adjacent items in quality, color or size, the insurer shall replace such items with material of like kind and quality so as to conform to a reasonably uniform appearance within the same line of sight, taking into account natural breaks. The insured shall not bear any cost over the applicable deductible, if any.

B. Motor Vehicle Total Losses.

When a property damage liability or physical damage claim requires adjustment and settlement of motor vehicle total loss on the basis of actual cash value or replacement with another vehicle of like, kind and quality, one of the following methods must apply:

1. Replacement Vehicle. Insurer may offer a replacement vehicle which is a comparable motor vehicle available to the claimant, with all applicable taxes, registration fees and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost to claimant other than any deductible provided in the policy. The claimant may accept or reject such offer and any rejection thereof must be documented in the claim file.

2. Cash Settlement. Insurer may offer a cash settlement based upon actual cost, less any deductible provided in the policy, to cover purchase of a comparable motor vehicle including all applicable taxes, registration fees and other fees incident to transfer of

evidence of ownership of a comparable motor vehicle.

Such cost shall be no less than the average of:

(a) the retail value given such vehicle by the National Automobile Dealer Association (NADA) Used Car Guide or Older Used Car Guide, as applicable, in effect at the time of the loss; and

(b) the retail value of a comparable vehicle furnished to the insurer by a third party vendor that provides total loss valuation services to insurance companies for purposes of settling claims. The third party vendor's methodology shall satisfy the following criteria:

(i) The methodology shall give primary consideration to the values of comparable vehicles that are available in the local market;

(ii) If it is necessary to expand the geographic parameters of the third party vendor's search beyond the local market in order to achieve statistical validity and there are credible price differentials between comparable vehicles located within the local market and outside of it, the methodology shall adjust the latter to reflect the values of comparable vehicles located within the local market; and

(iii) The methodology shall utilize only the values of comparable vehicles available for sale within the United States.

(c) In determining a cash settlement offer pursuant to this subsection, the monetary impact of items of special equipment that enhance the retail value of the totaled vehicle shall not be considered in the initial averaging described in (a) and (b) above ("the base average"), but shall be added to the base average, subject to any policy

limitations relating to special equipment. For purposes of this subsection, “special equipment” shall mean an item or option that is not made by the original equipment manufacturer, or is not listed in the NADA Used Car Guide or Older Used Car Guide, as applicable, in effect at the time of the loss.

(d) Such costs as, but not limited to, reconditioning and tune up shall not be deducted by insurer, unless such deductions are justified and detailed as a result of actual inspection by licensed adjuster or appraiser.

(e) Vehicles not listed in the applicable NADA used car guide should be valued based upon a reasonable and verifiable method including but not limited to the local marketplace.

(f) As used in this subsection, the following terms shall have the following meanings:

(i) “Comparable vehicle” shall mean a vehicle of the same make and model that is in similar or better condition and is no older than the totaled vehicle;

(ii) “Local market” shall mean an area within a 75-mile radius of the zip code used to identify the place of garaging of the totaled vehicle; and

(iii) “Available” shall mean vehicles that are currently available for sale, were available and/or sold within ninety (90) days of the date of loss.

(g) The insurer shall provide to the claimant, no later than the date the insurer makes a settlement offer for such totaled vehicle, (1) a detailed copy of the insurer’s calculation of such vehicle’s total loss value, (2) a copy of any valuation report provided to the insurer by any automobile valuation source that is not publicly available, and (3) a written notice disclosing that the claimant may dispute such

settlement by contacting the Consumer Services Section of Vermont Insurance Division. The written notice shall include the following statement, which shall appear in the final paragraph of the notice in not less than twelve-point type: "If you disagree with this settlement offer or have questions or concerns about the valuation or settlement offer, you may contact the Consumer Services Section of the Vermont Insurance Division." The notice shall include the address and toll-free telephone number for the Consumer Services Section. For personal lines consumers, the documents required by this subsection may be delivered by electronic means if the claimant consents in the manner required by 9 V.S.A. §287(a).

SECTION 9. MOTOR VEHICLE LIABILITY LOSS OF USE

Motor vehicle insurers insuring policyholders for all sums which the insured shall become legally obligated to pay as damages because of property damage caused by accident and arising out of ownership, maintenance or use of the motor vehicle shall adhere to the following minimum guidelines with respect to the settlement, negotiation or payment of third party automobile liability loss of use claims:

A. Where liability has become reasonably clear, no insurer, adjuster, or other insurance company representative authorized to adjust claims shall refuse to negotiate claims for loss of use with respect to third party automobile liability claims. When an insurer shall become legally obligated to pay full or partial damages under an automobile liability insurance policy, such insurer shall also be liable in the same proportion to the claimant for reimbursement for reasonable expenses incurred by the claimant to obtain substitute transportation when need for substitute transportation, which shall not be limited to business necessity, is demonstrated. The

insurer shall be responsible for loss of use during the period of time it should reasonably take to appraise, obtain parts and repair the damaged motor vehicle. If the motor vehicle cannot be economically repaired, such expense for loss of use shall be paid until the claimant can reasonably obtain a replacement motor vehicle.

B. If a claimant's motor vehicle has been incapacitated as a result of an accident and if a claimant inquires to the insurer about the use of a substitute motor vehicle, the insurer, adjuster, agent or other company representative shall disclose to the claimant that it will pay for the reasonable expenses for loss of use if liability becomes reasonably clear. The substitute vehicle must be of similar class and utility as the vehicle it is temporarily replacing, unless the claimant consents to a vehicle of a different class or utility.

C. When a claimant or potential claimant inquires about loss of use or about its potential benefits generally, insurers, adjusters, agents or other company representatives shall disclose to the claimant those fees and expenses for loss of use which the insurer normally reimburses to claimants and, also, those fees and expenses which the insurer does not reimburse to claimants for use of substitute vehicles.

D. Insurer shall be liable for reasonable rental reimbursement during period that damaged motor vehicle cannot be temporarily repaired and operated, due to the unavailability of necessary repair parts.