

**Department of Banking, Insurance, Securities & Health Care Administration
Vermont Insurance Division**

REGULATION 79-2 Fair Claims Practices (Agents, Adjusters, etc.)

Sept. 1, 1979

S 1 Authority

8 V.S.A., Section 4724 of the Unfair Trade Practices Act 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 section 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. Under such authority as is found in Section 4724 and also in Section 75 of Chapter 3 of 8 V.S.A., we promulgate this Regulation.

S 2 Purpose

This Regulation is intended to supplement 8 V.S.A., Section 4724 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.

S 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., Section 4724 of the Unfair Trade Practices Act.

S 4 Definitions

The definitions of person and of insurance policy or insurance contract contained in 8 V.S.A., Section 4722 of the Unfair Trade Practices Act shall apply to this Regulation and, in addition, where used in this Regulation:

A. Agent means any individual, corporation, association, partnership, or other legal entity 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 an individual, corporation, association, partnership or other legal entity 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 individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract in this State;

E. Insurer means a person who issues any insurance policy or insurance contract in this State;

F. Worker's Compensation includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation;

G. Fire Insurance Policy means The Standard Fire Insurance Policy, combined with its related forms, but shall not include other policies containing the peril of fire, including, but not limited to, SMP, homeowners, inland marine or similar policies; and

H. 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.

S 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) working days. If the acknowledgement is made orally, notation of the acknowledgment shall be recorded in the insurer's record or file.

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

C. An insurer who receives an inquiry or complaint from the Department of Banking and Insurance shall furnish a response within fifteen (15) working days addressing itself to the specifics of the inquiry or complaint.

S 6 Time limit for claim settlements

A. Within fifteen (15) working 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) working days after receipt of the proofs of loss giving the reasons more time is needed. Claims governed by 8 V.S.A., Chapter 105, Section 3868, are excepted from this provision. 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) working days after receipt of notice of claim giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, thirty (30) working days from the date of the initial notification and every thirty (30) working 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) working days and to third party claimants sixty (60) working 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) working days, unless a further delay is mandated under an order by a court of competent jurisdiction or required by law.

S 7 Standards for fair and equitable settlements

A. If the insurer denies a claim in whole or in part, it shall provide claimant with appropriate reasons therefore, including reference to appropriate 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 co-insurance).

C. All insurers who do not maintain a claims office or offices in Vermont shall provide claimant with toll-free or collect 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.

S 8 Standards for settlements of property and/or physical damage claims

A. Adjustment of Total and Partial Losses if Insurer Inspects Damaged Property or Motor Vehicle.

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.

B. Motor Vehicle Losses--Additional Requirements 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. 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. 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.

3. Insurer may offer a cash settlement based upon published automobile price guides, less any deductible provided in the policy. Items of equipment not listed in the price guides shall be given appropriate value, which shall be in addition to the retail value listed in the price guides. The value so determined shall be adjusted to reflect:

(a) the cost of a comparable motor vehicle in the local market area when one is available in that area, or

(b) Quotations obtained by insurer from two or more qualified dealers located within local market area when a comparable motor vehicle is not available in that area.

(c) 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.

(d) When a motor vehicle total loss is settled on a basis which deviates from the methods described in subsections 3.(a), (b) and (c) of this section, the deviation must be supported by documentation giving particulars of the motor vehicle's conditions. Any deductions from such value, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount and fully explained to claimant.

S 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.

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.

This regulation shall take effect on September 1, 1979.