

DEPARTMENT OF INSURANCE

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**ADVISORY NOTICE: ELIGIBILITY GUIDELINES AND THE
USE OF LOSS INFORMATION BY
RESIDENTIAL PROPERTY INSURERS**

DATE: APRIL 24, 2003

TO: ALL RESIDENTIAL PROPERTY INSURERS

The purpose of this advisory notice is to direct your attention to those laws concerning the appropriate use of loss history information in the rating and underwriting of residential property insurance in California. The Department of Insurance (CDI) has received numerous complaints from homeowners and tenants who have been treated unfairly by insurance companies, particularly in the gathering and use of loss information in the underwriting process.

Residential property insurers, among others, are required to maintain eligibility guidelines in accordance with California Code of Regulations (CCR), Title 10, §2360.2 - Eligibility Guidelines/Qualification for Insurance and Rating Plan, which states:

An insurer shall maintain eligibility guidelines for every line of insurance offered for sale to the public. The Eligibility Guidelines shall be sufficiently detailed to determine the appropriate rating plan for the insured. An insured or applicant who meets the eligibility guidelines shall qualify to purchase the insurance.

Further, eligibility guidelines are defined, in CCR §2360.0(b), as “specific, objective factors” that “have a substantial relationship to an insured's loss exposure.”

The application of eligibility guidelines that are not specific and objective, and that do not have a substantial relationship to an insured's loss exposure, result in adverse underwriting decisions that are unfairly discriminatory, in violation of California Insurance Code (CIC) §1861.05(a). Actions that can be considered unfairly adverse when based upon noncompliant eligibility guidelines include the insurer or its agent failing or refusing to offer a policy, declining, non-renewing, or restricting coverage, surcharging the rate, or placing the risk in a higher rate tier or program.

Evaluation of Losses

Not every loss is related to the current loss exposure. An insurer choosing to include losses as an eligibility criterion must be able to demonstrate that each loss utilized bears a substantial relationship to risk of future loss. A loss at a particular property, or by a particular consumer, must be evaluated to determine if the loss is evidence of increased risk of future loss. Losses that have been fully remedied or otherwise resolved so that they no longer present an increased risk of loss do not have a substantial relationship to the insured's loss exposure.

Inquiries regarding coverage, coverage discussions, or hypothetical discussions between the insured and the insurer or its agents are not relevant for underwriting consideration, unless an actual loss or exposure to loss is identified and determined to have a substantial relationship to the consumer's loss exposure.

Insurance Information and Privacy Protection

As described in CIC §791.12(b), personal information, such as loss history data, obtained from insurance-support organizations, such as claims database vendors, may not be the basis, in whole or in part, for an adverse underwriting decision; however, an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization.

Currently, much of the data used to determine residential loss history comes from insurance-support organizations that compile loss history records of consumers and of property locations. These records do not distinguish between losses or claims that do bear a substantial relationship to an insured's loss exposure and those that do not. Loss information, whether from a claims database, the application, or another source, must be evaluated by the insurer using the information. If necessary, further information must be gathered by the insurer to determine if an increased exposure to future loss exists before the loss information can be used as grounds for an adverse underwriting decision.

Additionally, when an insurer makes an adverse underwriting decision based on information from a consumer report, the insurer is required to provide notice and advise the consumer of his or her rights, as required by CIC §791.10 and the Fair Credit Reporting Act (15 USC §1681 *et seq.*)

Summary

Residential property insurers are advised to review their eligibility guidelines and practices with respect to the use of loss history to ensure that they comply with all applicable laws. Insurers that do not comply with all applicable laws are subject to administrative action and penalties. CDI will not approve a rate application that does not contain all data necessary to determine whether the requested rate complies with the law, including eligibility guidelines that are specific, objective and that have a substantial relationship to an insured's loss exposure.

Complaints regarding these provisions will receive priority in consumer services activities and market conduct examinations, and throughout the enforcement process.

Any questions regarding this notice can be addressed (via e-mail with attachment, if possible) to:

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John Garamendi
Insurance Commissioner

Note: Authority: CIC §791.12, 1861.05(a), and CCR §2360.2 References: CIC §791.02(a)(1), 791.10(a), and 1857, and CCR §2360.0(b), 2360.3, and 2360.6, 2648.4(b) and USC §1681.
