



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Licensed Brokers Registered with the California FAIR Plan

FROM: Commissioner Ricardo Lara

DATE: March 11, 2022

RE: Coverage with the FAIR Plan When Basic Property Insurance Is Unavailable in the Normal Market

Insurance Code section 10090(d) makes it clear that, as the insurer of last resort, the California FAIR Plan ("FAIR Plan") was created and is responsible for insuring qualified properties for which basic property insurance is unavailable in the normal insurance market. FAIR Plan issued a Bulletin to FAIR Plan brokers, dated November 23, 2021, attached, about the availability of basic property insurance in the normal market. California Insurance Code section 10090(d) requires the FAIR Plan to make available basic property insurance when it cannot be obtained through the normal insurance market. The normal insurance market includes both admitted insurers and licensed surplus line brokers.

Insurance Code sections 10090(c) and 10093(a) emphasize that persons seeking basic property insurance are to be encouraged to obtain insurance in the normal market, and FAIR Plan and registered brokers should encourage those insured by FAIR Plan to periodically search the normal market for coverage. However, FAIR Plan Order MI-2016-00021, attached, makes it clear that persons seeking basic property insurance, and the registered brokers that represent them, "need not show that they have unsuccessfully attempted to obtain insurance through the normal market...because the Commissioner finds that this erects an artificial barrier preventing or delaying consumers from obtaining coverage".

Although FAIR Plan may require brokers submitting applications to the FAIR Plan to e-certify that a diligent search of the normal insurance market was made and that basic property insurance was unavailable for the client to purchase, it is the view of the Department that brokers are not statutorily required to prove to FAIR Plan that their search was "diligent" or that insurance in the normal market was "unavailable." The FAIR Plan statutes in the Insurance Code do not define the words "diligent" or "unavailable." The Department considers insurance in the normal market to be "unavailable" if, for example, it is unaffordable to the applicant.

Please share this information with other brokers who handle FAIR Plan business.



TO: Registered FAIR Plan Brokers

FROM: California FAIR Plan

DATE: Tuesday, November 23, 2021

SUBJECT: **FAIR Plan is Insurer of Last Resort**

This is an important reminder that the FAIR Plan is the insurer of last resort.

California Insurance Code section 10090(d) states that coverage is available for property insurance at the FAIR Plan that cannot be obtained through the normal insurance market. The code defines the normal insurance market as both admitted insurers and licensed surplus line brokers.

Risks should be submitted to the FAIR Plan for coverage after a diligent search of the normal insurance market has been made. A diligent search is mandated under California Insurance Code section 10093(a).

In accordance with your license requirements, brokers are required to comply with these insurance laws.

Please note, brokers submitting applications to the FAIR Plan will be required to e-certify that a diligent search of the normal insurance market was made pursuant to California Insurance Code Sec. 10093(a) and the applicant was unable to obtain basic property insurance through normal channels.

While we recognize that there have been changes in the market recently, a nonrenewal by an existing carrier does NOT automatically qualify a risk for a policy with the FAIR Plan.

If the client is placed with the FAIR Plan after a diligent search, another search of the market should be conducted annually in advance of the renewal.

This search should be a part of the discussions held with your clients regarding coverage options and available limits of coverage.

Please share this information with everyone in your office who handles FAIR Plan business.

CONFIDENTIALITY NOTICE: This document is intended for internal use only by the California FAIR Plan Association (the FAIR Plan) and brokers placing business with the FAIR Plan. Please share this document only with your employees who work with FAIR Plan policyholders.

1 **BEFORE THE INSURANCE COMMISSIONER**
2 **OF THE STATE OF CALIFORNIA**

3
4 In the Matter of

File No. MI-2016-00021

5 THE CALIFORNIA FAIR PLAN
6 ASSOCIATION

ORDER

7
8 **WHEREAS**, California Insurance Code (CIC) Section 10090(b) specifies that one
9 purpose of the California FAIR Plan Association ("FAIR Plan") is to assure the availability in
10 California of "basic property insurance" defined in CIC Section 10091(c) as "insurance against
11 direct loss to real or tangible personal property at a fixed location in those geographic or urban
12 areas designated by the commissioner, from perils insured under the standard fire policy...".

13 **WHEREAS**, CIC Section 10091(c) identifies the perils that FAIR Plan shall, at a
14 minimum, cover, but does not state whether that coverage shall be offered on an actual cash value
15 basis or on a replacement cost basis.

16 **WHEREAS**, FAIR Plan's dwelling coverage currently does not offer as optional
17 coverages 1) replacement cost coverage for contents; or 2) separate debris removal coverage.

18 **THEREFORE**, it is ordered that FAIR Plan revise its basic property insurance policy to
19 offer, as optional coverages, replacement cost coverage for contents in an amount not to exceed
20 the contents policy limit of liability, and debris removal in an amount not to exceed 5% of the
21 combined limits of liability of Coverages A, B and C, as purchased by the insured. FAIR Plan
22 shall prepare and submit a rate and form filing to the Commissioner by March 1, 2016 that
23 reflects the new optional coverages.

24 **WHEREAS**, certain FAIR Plan policyholders who have properties eligible for dwelling
25 replacement cost coverage have not selected this coverage (for which there is no additional
26 charge).

27 **WHEREAS**, FAIR Plan automatically includes inflation guard coverage on all policies
28 which have replacement cost coverage (for which there is no additional charge except for

1 premium increases associated with future increases in the dwelling limit).

2 **THEREFORE**, it is ordered that FAIR Plan shall automatically include its dwelling
3 replacement cost endorsement on all eligible dwellings, for both new business and renewals,
4 unless the applicant or policyholder affirmatively declines this coverage.

5 **THEREFORE**, it is ordered that FAIR Plan amend its underwriting guidelines
6 so that all eligible properties will automatically carry replacement cost and inflation guard
7 coverage, unless the applicant or policyholder affirmatively declines this coverage.

8 **WHEREAS**, coverage through FAIR Plan is typically obtained through an insurance
9 broker, not directly through FAIR Plan, and consumers should be encouraged to use the services
10 of a broker when seeking coverage through FAIR Plan. The California Department of Insurance
11 (CDI) licenses more than 90,000 brokers that are California residents and that are eligible to write
12 basic property insurance. At present, only approximately 6,600 brokers are registered with FAIR
13 Plan to write FAIR Plan business and consumers do not have an easy way to identify them, which
14 may negatively impact the availability of basic property insurance through FAIR Plan.

15 **THEREFORE**, it is ordered that FAIR Plan create and place on its website a consumer-
16 friendly data base that permits consumers to search for brokers who have registered with FAIR
17 Plan. This database shall identify one or more registered brokers in closest proximity to the
18 applicant's property based upon USPS Zip Code.

19 **WHEREAS**, at present, persons seeking basic property insurance through FAIR Plan in
20 certain designated areas throughout the state must provide a written statement to FAIR Plan that,
21 after diligent effort, they have been unable to obtain insurance from an admitted insurer or surplus
22 line broker, and list the names of at least three admitted insurers or surplus lines brokers from
23 whom they have attempted but have been unable to obtain insurance.

24 **WHEREAS**, basic property insurance coverage through FAIR Plan should be made
25 available to any person seeking basic property insurance who has been unable to obtain insurance
26 through the admitted or surplus lines market.

27 **THEREFORE**, it is ordered that, for all geographic areas in California, persons seeking
28 basic property insurance through FAIR Plan need not show that they have unsuccessfully

1 attempted to obtain insurance through the normal market provided by admitted insurers or surplus
2 lines brokers, because the Commissioner finds that this erects an artificial barrier preventing or
3 delaying consumers from obtaining coverage. Pursuant to CIC Section 10090(c), all persons are
4 encouraged to obtain property insurance through the normal insurance market, and FAIR Plan
5 should continue to remind its policyholders to search the normal insurance market for coverage.
6 Nothing in this order shall be construed as altering the requirement that before a property can be
7 insured by FAIR Plan, it must meet reasonable underwriting standards including, but not limited
8 to, physical condition of the property, property use or housekeeping, or other characteristics of
9 ownership, condition, occupancy or maintenance that violate public policy and/or result in
10 unreasonable risk of loss.

11 This order is issued pursuant to the authority of CIC Sections 10091(c) and 12921, and
12 shall be effective immediately. However, unless a date is specified for implementing any part of
13 this Order, FAIR Plan shall implement this Order within 120 days of the date this Order is
14 executed by the Department, unless extended by the Commissioner.

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16 Dated: 1/20/2016.

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18 By 
19 DAVE JONES
20 Insurance Commissioner
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