

DEPARTMENT OF INSURANCE
Legal Branch



NOTICE REGARDING DUTY TO PROVIDE CLAIM-RELATED DOCUMENTS

TO: Property Insurers Issuing Fire Policies in California

DATE: September 9, 2016

This Notice reminds insurers issuing fire insurance policies in California of their duties under California Insurance Code section 2071 regarding "claim-related documents."

Background

Insurance Code section 102(a) defines "fire insurance" to include, *inter alia*, insurance against loss by fire, lightning, windstorm, tornado, or earthquake.¹ Insurance Code section 2070 *et seq.* generally requires that insurers issuing fire insurance policies use the California Standard Form Fire Insurance Policy ("standard form") prescribed in section 2071.

Claim-related documents – duties and definition

The standard form language in section 2071 imposes two duties with respect to claim-related documents:

- Insurers must *notify* every claimant that the claimant may obtain, upon request, copies of claim-related documents.
- Insurers must *provide* claim-related documents upon a claimant's request.

The standard form language recited in section 2071 defines "claim-related documents" to mean:

¹ Paragraphs (b) and (c) of Insurance Code section 102 also define fire insurance. However, the last sentence in section 102 states that section 2070—the requirement to use the standard form of fire insurance policy contained in section 2071 that is the subject of this Notice—applies only to coverage described in section 102(a).

[A]ll documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third-party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs.

The intent behind the requirement that insurers provide claim-related documents is to allow claimants to understand (and potentially contest) the basis for an insurer's valuation of a claim. Insurers should determine whether a particular document is a claim-related document with this intent in mind.

The standard form language in section 2071 exempts from the duty to provide claim-related documents "[a]ttorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information."

Section 2070 allows the standard form not to be used if "coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy." The Department takes the position that the above-described duties to notify claimants about claim-related documents and provide those documents are essential; and no fire policy lacking such duties would be substantially equivalent to the standard form.

When must an insurer send the notice of the right to request and obtain claim-related documents?

The standard form language in section 2071 does not specify how soon an insurer must provide an insured with notice of the insured's right to request claim-related documents after an insured files a claim. Implicitly, an insurer may not delay sending the notice if the delay would prejudice the insured. Conversely, notice sent with the first written communication to a claimant after a claim has been filed, or with an initial communication of a damage valuation amount, would comply with the spirit of the law.

When must an insurer provide claim-related documents?

The standard form language in section 2071 requires that insurers provide a claimant with copies of all claim-related documents that are not exempt (e.g. privileged) *within 15 calendar days* after receiving a request from an insured for such documents.

Please direct any questions about this Notice to:

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