

# State of Delaware



DONNA LEE H. WILLIAMS  
INSURANCE COMMISSIONER

841 SILVER LAKE BLVD.  
DOVER, DELAWARE 19904-2465  
(302) 739 - 4251  
FACSIMILE (302) 739 - 5280

## Department of Insurance

### FORMS AND RATES BULLETIN NO. 28

#### LIMITATIONS ON NONRENEWALS OR SURCHARGES ON RESIDENTIAL HOMEOWNER POLICIES

Issued: January 20, 2004

#### 1.0 Purpose

On October 24, 1997, I had issued **Forms and Rates Bulletin 18** prohibiting premium surcharges based on the number of claims incurred during specified time periods. The bulletin prohibited rate increases without corresponding increases in loss experience.

During the first few months of 2003, the Delaware Insurance Department became concerned about an apparent increasing trend in many states by insurers issuing residential homeowners coverage to nonrenew coverage based on single claims or multiple minor claims filed by the insured. A number of states have instituted consumer protection measures to regulate an increasing practice by insurers to apply surcharges to insureds' premiums based on factors such as multiple minor claims being filed or multiple inquiries being made by insureds. A departmental committee was formed in mid-2003 to monitor the industry's activities in Delaware and to recommend appropriate measures to protect consumers.

Under 18 *Del. C.* § 4122, an insurer is required to provide written notice to insureds or applicants of the reasons for declining an application or for canceling or nonrenewing a policy of insurance on real or personal property. The permissible reasons for cancellation or nonrenewal are listed in 18 *Del. C.* § 4123. Under 18 *Del. C.* Chapter 25, surcharges would have to be approved under an appropriate rate filing by the insurer. The purpose of this bulletin is to supersede **Forms and Rates Bulletin 18** with respect to surcharges and to provide guidance with respect to the conditions under which insurers can issue notices of nonrenewal and/or impose surcharges upon renewal of residential homeowners insurance policies.

#### 2.0 Definitions

2.1 "Inquiry" means any contact initiated by the insured that is not the filing or reporting of a claim to the insurer.

2.2 "Minor claim" means claims for medical payments, claims for workers compensation, claims for mine subsidence or any claim where the payment by the insurer does not exceed the applicable deductible for the particular claim upon which benefits are paid including any adjustment required by reason of a successful subrogation.

2.3 "Paid claim" means any actual payment by an insurer as a result of a claim for benefits that exceeds the applicable deductible for the particular claim.

2.4 "Unpaid claim" means a claim upon which the insurer has not yet made a payment or has not yet provided a benefit or a closed no-pay claim. A claim is unpaid if an insurer obtains reimbursement by reason of subrogation.

2.5 "Natural phenomena related event" means damage caused by weather or natural phenomena, commonly referred to as "acts of God," whether or not classified as an emergency by any federal or state authority.

### **3.0 Limitations on Surcharges**

3.1 No insurer authorized to do business in this State shall impose a surcharge at the inception of a homeowners insurance policy or upon renewal thereof solely because of claims or losses due to natural phenomena related damage or a third-party act committed by someone who is not a resident of the insured dwelling, unless the claim or loss identifies or confirms an increase in hazard, a material change in the risk assumed or a breach of contractual duties, conditions or warranties that materially affect the nature or the insurability of the risk. However, this limitation shall not be construed to prohibit an insurer from offering to continue coverage on different terms and conditions if the insured fails to reduce the risk of additional or future claims or losses, either by effecting necessary repairs or taking other remedial action.

3.2 No insurer authorized to do business in this State shall impose a surcharge on a premium of a homeowners insurance policy solely due to claim or loss frequency unless there have been two or more paid claims during the most recent three-year experience period. In counting the number of claims for the purpose of this bulletin, the insurer shall not consider or count inquiries, unpaid claims, minor claims or for a loss caused by a natural phenomena related event.

### **4.0 Limitations on Nonrenewals**

4.1 No insurer authorized to do business in this State shall refuse to renew a homeowners insurance policy solely because of claims or losses due to natural phenomena related damage or a third-party act committed by someone who is not a resident of the insured dwelling, unless the claim or loss identifies or confirms an increase in hazard, a material change in the risk assumed or a breach of contractual duties, conditions or warranties that materially affect the nature or the insurability of the risk. However, this limitation shall not be construed to prohibit an insurer from offering to continue coverage on different terms and conditions if the insured fails to reduce the risk of additional or future claims or losses, either by effecting necessary repairs or taking other remedial action.

4.2 No insurer authorized to do business in this State shall refuse to renew a homeowners insurance policy solely due to claim or loss frequency unless there have been two

or more paid claims during the most recent three-year experience period. In counting the number of claims for the purpose of this bulletin, the insurer shall not consider or count inquiries, unpaid claims, minor claims or for a loss caused by a natural phenomena related event.

## 5.0 General Provisions

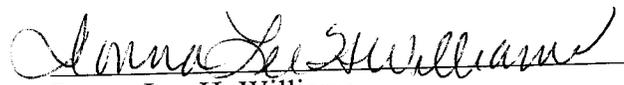
5.1 No insurer shall report any information related to claims not yet settled, inquiries or unpaid claims not countable for nonrenewal or surcharge purposes in Section 3 above to the Comprehensive Loss Underwriting Exchange ("CLUE") or other similar database.

5.2 Every insurer shall provide an advance annual notice to its insureds describing how the insurer considers claims history in determining whether to cancel, nonrenew or surcharge a policy as well as the maximum amount that the insurer could apply as a surcharge. Such notice may be on the declarations page or as a notice that is sent to the insured separately or with the policy.

5.3 No insurer shall consider any claims history or loss experience, including data from CLUE or any other database, for purposes of cancellation or non-renewal for inquiries, unpaid claims or minor claims that occurred prior to providing the notice referred to in paragraph 5.2. The insurer may use less than three years experience during the first three years after the first annual notice referred to in paragraph 5.2.

5.4 This bulletin shall take effect immediately. This bulletin supersedes **Forms and Rates Bulletin 18** which shall only be applicable to surcharges noticed between October 24, 1997 and the January 20, 2004.



  
Donna Lee H. Williams  
Insurance Commissioner