

# MERLIN

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October 7, 2020

James J. Donelon, Commissioner of Insurance  
Louisiana Department of Insurance  
1702 N. Third Street  
P.O. Box 94214  
Baton Rouge, LA 70802  
commissioner@ldi.la.gov  
225-342-5423

RE: Request for Advisory Letter and/or Amendment to Required Disclosures for Proof of Loss and Replacement Cost Coverage Deadlines in the Event of Catastrophe Pursuant to L.R.S. 22:1264 Presumption of Coverage

Dear Commissioner Donelon,

In recent weeks, our firm, Merlin Law Group, P.A., and the firm Dwight & Gary, LLC, of Lake Charles have teamed up to educate and assist Louisiana policyholders in understanding their potential rights and obligations in the aftermath of Hurricane Laura. As a result of several seminars and community outreach programs we have held and inquiries from public adjusters serving the area, it has come to our attention that many Louisiana residential and commercial property and casualty policies and insurers do not advise policyholders of the statutory extension of the proof of loss and replacement cost coverage deadlines for losses as a result of a catastrophe pursuant to L.R.S. 22:1264:

**§ 1264. Presumption of coverage**

A. For losses that arose due to a catastrophic event for which a state of disaster or emergency was declared pursuant to law by civil officials, for those areas within the declaration, no damages to covered property shall be automatically denied by the inability of the policyholder to provide sufficient proof of loss within the time

limits and requirements of the policy. The time limit for the submission of proof of loss shall be not less than one hundred eighty days. The time limit shall not commence as long as a declaration of emergency is in existence and civil authorities are denying the insured access to the property.

B. For losses that arose due to a catastrophic event for which a state of disaster or emergency was declared pursuant to law by civil officials, for those areas within the declaration, any policyholder with replacement cost provisions shall be entitled to complete repairs to the property within one year from the date of the loss or the issuance of applicable insurance proceeds, whichever is later. Adherence to this provision shall entitle the policyholder with a replacement cost provision to receive full value of the covered damage that has been repaired, without reduction due to depreciation.

C. The provisions of this Section shall be applicable to all new policies and renewal policies delivered in the state of Louisiana after April 18, 2006.

Renumbered from R.S. 22:682 by Acts 2008, No. 415, § 1, eff. Jan. 1, 2009. Added by Acts 2006, 1st Ex. Sess., No. 23, § 1.

We have reviewed numerous Louisiana policies and are concerned that some of the residential policies contain only the minimally required Disclosures pursuant to L.R.S. 22:1332, which disclosures merely advise that there **may be** deadlines, for example:

**CLAIM FILING PROCESS** There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

*Ref.*, ALLSTATE Deluxe Plus Homeowners Policy AP3340.

Uninformative Disclosures, similar to the above, coupled with the following policy language reviewed regarding the time delays for submitting a proof of loss are cause for unnecessary angst and anxiety for already distressed Louisiana policyholders impacted by Hurricane Laura:

### **3. What You Must Do After A Loss**

In the event of a loss to any property that may be covered by this policy, you must:

g) within 60 days after the loss, give us a signed, sworn proof of the loss. This statement must include the following information:

- 1) the date, time, location and cause of loss;
- 2) the interest insured persons and others have in the property, including any encumbrances;
- 3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
- 4) any other insurance that may cover the loss;
- 5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
- 6) at our request, the specifications of any damaged building structure or other structure;
- 7) evidence supporting any claim under the Credit Card, Bank Fund Transfer Card, Check Forgery And Counterfeit Money protection. State the cause and amount of loss.

*Id.*

**(28) PROOF AND PAYMENT OF LOSS**

A detailed sworn proof of loss shall be filed by the Assured with the Underwriters, in writing, within sixty (60) days of Underwriters' request including:

- a) The date and time of loss;
- b) The interest of the Assured and all others with an interest in property;
- c) All encumbrances on the property;
- d) Other insurance which may cover the loss;
- e) Changes in title, use occupancy or possession of the property and if required,
- f) Any plans and specifications of the damaged property.

Loss shall be adjusted with the Assured and all adjusted claims shall be paid to the Assured after presentation and acceptance of sworn proof of loss by the Underwriters or its appointed representatives. No loss payment shall be made until Underwriters have received the required Proof of Loss. Underwriters will make payments for covered losses to the Assured or any mortgage holder based on the financial interest each has in the covered property at the time of the loss as shown in the Proof of Loss.

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*Ref.*, Certain Underwriters at Lloyd's of London REI 3/1/2020 V2

In order to fully inform Louisiana policyholders and insurers of the statutory deadlines, we respectfully request that pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 *et seq.*, and in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*, or any other

applicable authority, the Louisiana Department of Insurance issue an Advisory letter to “ALL PROPERTY AND CASUALTY RESIDENTIAL AND COMMERCIAL INSURERS ADMITTED OR APPROVED TO ISSUE POLICIES INSURING RISKS IN LOUISIANA AND CLAIMS ADJUSTERS” advising them of statutory extensions of the deadlines for Proofs of Loss and Replacement Cost Coverage Deadlines pursuant to L.R.S. § 1264. Presumption of coverage. We further request steps be taken to amend Regulation 107—Homeowner and Fire/Commercial Insurance Policy Disclosure Forms (LAC 37:XIII.Chapter 153) to include informative disclosures regarding these statutory deadlines.

We thank you for the work you do to protect Louisiana policyholders and look forward to working with you to ensure Louisiana policyholders are informed of their rights and benefits under their Louisiana policies of insurance.

Sincerely,

**MERLIN LAW GROUP, P.A.**

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