

Commissioner's Bulletin # B-0068-08

September 29, 2008

To: ALL INSURANCE COMPANIES, CORPORATIONS, EXCHANGES, MUTUALS, RECIPROCALLS, ASSOCIATIONS, LLOYDS, OR OTHER INSURERS WRITING PROPERTY AND CASUALTY INSURANCE IN THE STATE OF TEXAS AND TO AGENTS AND REPRESENTATIVES AND THE PUBLIC GENERALLY

Re: loss settlement calculation of actual cash value under an insurance policy that provides replacement cost coverage

The purpose of this bulletin is to remind insurers of the position of the Texas Department of Insurance (Department) when calculating actual cash value as outlined in Commissioner's Bulletin No. B-0045-98.

The bulletin set forth the Department's position that the standard method for determining actual cash value of a structure is the replacement cost with proper deduction for depreciation. The bulletin also stated that "the deduction of prospective contractors' overhead and profit and sales tax that determining the actual cash value under a replacement cost policy is improper, is not a reasonable interpretation of the policy language, and is unfair to insureds." Bulletin No. B-0045-98 is available online at the Department's website: <http://www.tdi.state.tx.us/bulletins/1998/b-0045-8.html>.

The Department's position has not changed. While individual company policy forms have been approved for use in Texas, the method set forth in Bulletin No. B-0045-98 continues to be a standard method of determining actual cash value under replacement cost policies. Thus, the insured continues to be entitled to reasonable and necessary expenses to repair or replace the damaged property, less proper deduction for depreciation. These expenses would include the services of a contractor. The deduction of prospective contractors' overhead and profit and sales tax, in addition to depreciation in calculating actual cash value, is an improper claim settlement practice on policies that provide coverage on an actual cash value or replacement cost basis.

The Department expects all property and casualty insurance companies to act in good faith and use fair claim settlement practices to effectuate "fair and equitable" settlements of claims and not engage in unfair settlement practices in determining the damages for a covered loss as required under the Insurance Code §541.060 and §542.003 and Texas Administrative Code Title 28, §21.203. However, the Department will not support attempts by contractors to charge for services that were not rendered nor attempts to charge twice for the payment of overhead and profit.

Additionally, these provisions require that estimates should be reasonable and not necessarily the product of a particular style, system or vendor exclusive of other reasonable alternatives.

For example, insurers should not routinely eliminate from consideration certain estimate practices, concepts and tools that may be used in estimating damages for a covered loss.

The Department will investigate allegations of unfair claim settlement practices, both in context of individual cases and in context of general business practices, and will take appropriate enforcement action when evidence of unfair claim settlement practices is apparent.

Questions regarding this bulletin may be directed to Gary Julian, Personal Lines Division, at (512) 322-2266 or gary.julian@tdi.state.tx.us.

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Commissioner of Insurance

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Last updated: 3/8/2018