

Arkansas Insurance Department

Asa Hutchinson
Governor



Alan McClain
Commissioner

May 4, 2020

BULLETIN NO. 19-2020

TO: ALL PROPERTY AND CASUALTY INSURERS LICENSED IN ARKANSAS, THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND OTHER INTERESTED PARTIES AND TRADE ASSOCIATIONS

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: WINDSTORM AND HAIL CLAIMS

It has come to the attention of the Arkansas Insurance Department that Arkansas residents have been denied coverage under their homeowner's policies for damages caused by the peril of windstorms or hail. Many of these denials are due to the insured's failure to report damage within the time period required under their policy.

Due to the fact that it is often unreasonable to expect a homeowner to identify wind or hail damage within the time period specified in the policy, it is the position of this Department that a period of 365 days must be allowed from the date the insured discovers or should have discovered the damage from wind or hail.

Language in policies limiting the time frame to 365 days will be interpreted to mean claims will be filed within 365 days of when a reasonable person exercising ordinary due diligence would have discovered the damage.

The Department also recognizes that there should be some final limitation to liability for such claims, and will consider claims made outside a five year time frame to be an unreasonable amount of time for a policyholder to discover damage from windstorms or hail. Five years was determined by the Department to be a reasonable measure based on state law limitations on actions for breach of contract. Ark. Code Ann. § 16-56-111.

Arkansas law supports the Department's position. In *Rowe v. National Security Fire and Casualty Co.*, 4 Ark. App. 16, 626 S.W.2d 622 (1982), the Arkansas Court of Appeals heard the appeal of a case in which the trial court ruled in favor of the insurer due to the fact that the insured failed to report fire damage to the insured property within the 60 days required by her policy. The decision was reversed with the statement that the failure to comply with the reporting requirement was not through any fault of the homeowner and that absent negligence, recovery should not be precluded under the policy. See also *National Mutual Casualty Co. v. Cypret*, 207 Ark. 11, 179 S.W.2d 161 (1944) (holding that although the insured did not notify the insurer of automobile theft within the timeline prescribed by the policy, notice was given within a reasonable time after the insured learned of the loss and affirmed payment of the claim ordered by the trial court.)

This bulletin is not intended to release homeowners from the obligation to report losses in a timely manner, but rather to provide guidance on determining what is reasonable in those instances where a delay in providing notice is not due to the fault of the insured.

The question of whether a delay in discovering the damage was reasonable or due to negligence of the homeowner will remain a question of fact subject to the specifics of a given case.

Any questions regarding this Bulletin should be directed to insurance.legal@arkansas.gov at the Arkansas Insurance Department or by phone at (501) 371-2600.



ALAN MCCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

May 4, 2020
DATE