

October 27, 2016

Maryland Insurance Administration, **VIA EMAIL**

Nancy Egan, Director of Government Relations and External Affairs

nancy.egan@maryland.gov

Nick Cavey, Assistant Director of Government Relations and External Affairs

nick.cavey@maryland.gov

Re: Comments on Proposed Homeowners Disclosure Notice Template

Dear Ms. Egan and Mr. Cavey,

We appreciate the opportunity to provide comments on the Maryland Insurance Administration's (MIA) draft Homeowners Disclosure Notice. Given how common it is for loss and disaster victims to find their homes significantly underinsured when it's too late to adjust their coverage, we share your agency's goal of educating consumers on options for properly insuring their assets to value.

We note, however, that because insurance is highly technical, consumers rely heavily on agents' expertise and the oral promises that are made to them when they buy their coverage. For that reason, disclosure notices alone cannot solve the underinsurance problem, and are often used against consumers as a liability shield. As you no doubt have heard from consumers who contact your agency for help, they were lulled into a false sense of security by an agent who in turn relied on a computer-generated estimate to set the dwelling replacement value. All too often, agents focus only on the policy price point to close the sale and not on the quality of coverage. Many are reluctant to recommend increasing policy limits or adding endorsements for fear they will lose the sale. Yet consumers rely on their professional expertise and assurances.

For this comment letter, we will show each section of the proposed notice as drafted, and then then provide our suggested revised version of same:

Draft version: Flood - The standard homeowners insurance policy does not cover loss caused by flood. Speak to your producer or your insurance company about flood coverage. Visit the National Flood Insurance Program ("NFIP") at www.floodsmart.gov or by phone 888-379-9531 to learn more.

Our suggested version: **Flood - The standard homeowners insurance policy does not cover loss caused by flood. Ask your agent or insurance company about options for protecting your property against the risk of flood. Visit the National Flood Insurance Program ("NFIP") at www.floodsmart.gov or by phone 888-379-9531 and consider all available coverage choices.**

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Coverage for Loss from Water that Backs up Through Sewers and Drains - Your draft version:

Insurance companies are required to offer you this coverage for your full policy limits. You may choose lower limits if available from your insurance company. Contact your producer or your insurance company for additional information and costs.

Our suggested version:

Coverage for Loss from Water that Backs up Through Sewers and Drains – Your insurance company must offer you coverage for this type of damage, but the choice to buy or not buy it is yours. Sewer backup and drain coverage is extremely useful if you live in an area where flash flooding and heavy rains are known to occur.

Deductibles - Your draft version:

All policies include a deductible. The deductible is the amount you must pay on a covered loss. Some policies may include separate deductible for perils such as hurricanes, named storms, wind or hail. Contact you producer or your insurance company if you have questions about deductibles.

Our suggested version:

Deductibles - Your policy includes one or more deductibles. The amount of your deductible reduces insurance benefits that will be available after a loss, so choose your deductible according to your personal financial situation. The higher your deductible, the lower your premium. Some policies may include separate deductible for perils such as hurricanes, named storms, wind or hail.

NOTE: MIA's current draft implies that the consumer must *pay* their deductible after a loss in order to collect benefits. That is a common misperception.

We urge the MIA to review and reference New York Insurance Regulation 159 (11 NYCRR 74)¹, which reads as follows:

Section 74.1 Policyholder disclosure.

(a) Every homeowner's and dwelling fire personal lines policy containing a hurricane deductible shall display the applicable percentage amount and corresponding dollar amount of the hurricane deductible in the policy declarations. The non-hurricane deductible, as well as any deductible applicable to all other covered perils, may be shown as a dollar amount only. The hurricane deductible provisions shall be shown in close proximity to the non-hurricane deductible provisions and shall be given equal or greater prominence as the non-hurricane deductible provisions applicable to the policy.

¹ See: http://www.dfs.ny.gov/insurance/r_finala/1999/reg159f.htm.

(b) Every homeowner's and dwelling fire personal lines policy containing a hurricane deductible shall be accompanied by a policyholder notice, to be filed with the Insurance Department, and which shall contain the following minimum information:

- (1) a prominent announcement that the accompanying policy is subject to a hurricane deductible;
- (2) a clear explanation that a hurricane deductible means the amount for which the policyholder is responsible in the event of a covered loss caused by a hurricane;
- (3) a plain-language explanation of the coverage part or parts subject to the hurricane deductible and of whether the hurricane deductible applies separately to each coverage part or in the aggregate to total losses under all affected coverage parts;
- (4) a statement that a clear display of the actual dollar amount as well as a description of the hurricane deductible as a percentage of the insured value can be found on the declarations page;
- (5) generic examples of how sample deductible amounts would apply to some theoretical loss scenarios, including losses smaller than and greater than the deductible amount;
- (6) a clear explanation of the event which shall trigger the hurricane deductible;
- (7) a clear explanation of the time period during which the hurricane deductible will be triggered; and
- (8) a clear explanation that, if a coverage part limit of liability or policy limit of liability is changed (for example, due to contractual inflation protection provisions, adjustments reflecting changes in replacement cost or a request by the insured), then the dollar amount of the deductible will be changed based on the amount of the new limit of liability.

Storm Loss Protective Device Discount - Your draft version:

You may receive a premium discount for your efforts to mitigate a loss or reduce the risk of loss from hurricanes or other storms. Examples of mitigation efforts are the installation of qualifying shutters, secondary water barriers, reinforced roof coverings; braced gable ends, tie downs and reinforced opening protections. For more details contact your producer or insurance company.

Our suggested revised version:

Storm Loss Protective Device Discounts: Some insurers offer discounts to property owners who install storm shutters, secondary water barriers, or reinforced roof coverings, braced gable ends, tie downs and reinforced opening protections. Contact your insurance agent or

company and ask them what discounts they offer for home improvements that reduce the risk of damage and loss due to a storm or flood.

NOTE: While we recognize that the notice for which we submit these comments cannot make new law, such as requiring insurance companies to disclose to the MIA what discounts they offer nor can it proscribe certain discounts that insurance companies must offer, we urge the MIA to look at what hurricane-prone states such as Florida have done to address mitigation discounts.²

Claims History - Your draft version:

In addition to any other allowable reasons, an insurance company may cancel or refuse to renew your policy based:

- 1) on the number of non-weather related claims you have within the three years of your policy renewal; or
- 2) on 3 or more weather related claims filed within the 3 years of your policy renewal; or
- 3) on 1 or more weather related claim within 3 years of the policy renewal if the insurance company gave you written notice for reasonable and customary repairs or replacement to the dwelling that you failed to make and that the loss could have been prevented if the repairs were made..

Our suggested version:

Claims History - An insurance company may cancel or refuse to renew your policy based:

- 1) on the number of non-weather related claims you have within the three years of your policy renewal; or**
- 2) on 3 or more weather related claims filed within the 3 years of your policy renewal; or**
- 3) on 1 or more weather related claim within 3 years of the policy renewal if the insurance company gave you written notice for reasonable and customary repairs or replacement to the dwelling that you failed to make and that the loss could have been prevented if the repairs were made.**
- 4) on written notice of a documented increased hazard and/or as required in §27-602**

² See: <http://www.florid.com/Sections/PandC/HurricaneLossMitigation.aspx>.

NOTE: We would specify what the “other allowable reasons” are (besides increased hazard which we recognize is referenced below). We would also like to see a reference to §27–602, which requires, *inter alia*, the notice of cancellation to be in writing.³

Increased Hazard – Your draft version

You may also be canceled or non-renewed if there is a change in the physical condition or contents of your premises or dwelling that increases a hazard and a chance of loss. This applies to a new ‘binder’ of coverage as well. This means that if your insurance company had known about the hazard, the insurance company would not have issued the policy.

Our suggested revised version:

You may also be canceled or non-renewed if there is a change in the physical condition or contents of your premises or dwelling that increases your risk of loss. This can happen if your insurer gets information between the time they process your application and officially issue a policy that causes them to change their minds about wanting you as a customer.

NOTE: The MIA should consider a separate bulletin on the issue of cancellation and non-renewal, recognizing that this is a complicated and nuanced topic in and of itself and the reasons for each differ.

Anti-Concurrent Causation - See Anti Concurrent Causation Notice for details.

We believe it would be helpful if §19–215(2) included a very basic definition of the ACC clause that every insurer would be required to use. For example: “The ACC clause in your policy means that if two causes, one of which is covered and one of which is excluded (e.g., wind and water) combine to cause damage to your home, there is no coverage for the loss.” It would also be helpful if the disclosure gave the homeowner a very specific recommendation, such as: “You should consider purchasing flood insurance in addition to your homeowner’s policy so that if a storm results in this type of damage, you will more likely have coverage for your loss.”

Summary of Coverage - See Summary of Coverage Notice for details.

UP invites the MIA to examine the California Residential Property Insurance Disclosure (Cal. Ins. Code sec. 10102 *et seq*)⁴ if it has not already done so.

Optional Coverages - See Optional Coverage Notice for details

We appreciate that there are additional notices on these important topics and that the MIA has shared the code sections with us. However, we would like to see these disclosures in the form of a notice template similar to the format of this notice.

³ See: http://www.marylandattorneygeneral.gov/PIC%20Documents/NONRENEWAL_CANCELLATION.pdf.

⁴ See: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ins&group=10001-11000&file=10101-10107>

About United Policyholders

United Policyholders (“UP”) is non-profit 501(c) (3) organization, founded in California in 1991, that is a consumer-oriented voice and information resource on insurance in all 51 states. UP is based in San Francisco but operates nation wide. UP does not sell insurance or accept direct funding from insurance companies. UP serves Maryland residents through our online Claim Help library, Roadmap to Recovery, Roadmap to Preparedness and Advocacy and Action programs.

UP’s Executive Director is serving in her seventh consecutive term as an official consumer representative to the National Association of Insurance Commissioners where she works with Maryland Insurance Administration staff. UP hosts a library of legal briefs, news, tips, sample forms and articles on commercial and personal lines insurance products, coverage, and the claims process at www.uphelp.org.

Thank you again for the opportunity to comment and thank you in advance for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Amy Bach". The signature is fluid and cursive, with the first name "Amy" and last name "Bach" clearly distinguishable.

Amy Bach, Esq., Executive Director

Jay Feinman, Distinguished Professor of Law, Rutgers Center for Risk and Responsibility