



March 17, 2015

Letter  
Withdrawn  
By Administrative  
Letter 2016-05

Administrative Letter 2015-05

**TO: All Companies Licensed to Write Fire and Fire in Combination with Other Coverages Including Policies Providing Homeowners Coverage, Coverage on Owner-Occupied Dwellings, and Coverage for Tenants; and Interested Parties**

**RE: Mandatory Notices; Withdrawal of Administrative Letters 1980-02, 1993-09, and 1999-04**

Over the years, many statutes have been added to Title 38.2 of the Code of Virginia requiring certain insurers to provide notices to applicants and insureds to make them aware of the additional coverages available for their protection or to make them aware of certain rights they may have under their policies. This administrative letter compiles information provided in previous administrative letters about notices required by a number of these statutes and provides guidance as to when and how such notices should be provided. **Consequently, the following administrative letters are hereby withdrawn: 1980-02, 1993-09, and 1999-04.**

The notices identified in this letter are not subject to approval by the Bureau of Insurance (Bureau), and **should not be filed** with the Bureau. Unless otherwise specified in the statute, insurers have flexibility as to the manner in which the notice is provided. For example, a stuffer may be used at the time a policy is mailed to an insured, or the notice may be prominently displayed on the application. However, the notice must not be ambiguous or obscure and must be given no later than at the time the new or renewal policy is delivered.<sup>1</sup>

Except as noted below, the policies to which the notice requirements identified in this letter apply include all fire policies and fire policies in combination with other coverages, including but not limited to mobile home policies, dwelling fire policies, homeowners policies, renters policies, commercial fire policies, commercial package policies providing fire coverage, and master policies providing mortgage force-placed fire coverage that are issued in Virginia. The notice requirements addressed in this letter do not apply to surplus lines policies or mutual assessment fire policies, except that the notice required by [Section 38.2-305](#) of the Code of Virginia must be provided when issuing mutual assessment fire policies.

<sup>1</sup> Additional information may be found in the *Common Problems Found During Examinations Identified by the Property and Casualty Market Conduct and Consumer Services Sections* that is located at <http://scc.virginia.gov/boi/laws.aspx>.

### Important Information to Policyholders Notice

[Subsection B of § 38.2-305](#) of the Code of Virginia requires that a specific notice be provided with each new or renewal insurance policy, contract, certificate, or evidence of coverage issued to a policyholder, covered person, or enrollee. This notice must read substantially the same as the notice in the Code. Examiners frequently find that this notice is not given when policies are renewed or when a renewal certificate is issued. The insurer should ensure that this notice is being given when required. This notice applies to all classes of insurance except those exempted in [§ 38.2-300](#) of the Code of Virginia, and except as specifically noted in [subsection E of § 38.2-305](#) of the Code of Virginia.

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### Replacement Cost Coverage

[Section 38.2-2118](#) of the Code of Virginia requires every insurer writing insurance policies on owner-occupied dwellings and appurtenant structures that have replacement cost provisions to provide to all *applicants* a notice (1) outlining the minimum coverage requirement necessary to make the replacement cost provision fully effective, and (2) the effect on a claim payment of not meeting the minimum coverage requirement.

### Coverage for Water that Backs Up Through Sewers and Drains

[Section 38.2-2120](#) of the Code of Virginia provides that any insurer who issues or delivers a **homeowners insurance policy** (including a **tenant's** personal property policy) as defined in [§ 38.2-130](#) of the Code of Virginia in the Commonwealth *shall* offer, as an option, coverage insuring against loss caused or resulting from water which backs up through sewers or drains. The notice must be given at the time a homeowner's policy is renewed as well as at the time a policy is initially delivered.

### Building Ordinance or Law Coverage

[Section 38.2-2124](#) of the Code of Virginia requires any insurer that issues a policy of fire insurance, or fire insurance in combination with other coverage, to provide a written offer of coverage for the repair or replacement of property in accordance with applicable ordinances or laws that regulate construction, repair, or demolition. This offer must be made with all new and renewal policies.

### Flood Notice

[Section 38.2-2125](#) of the Code of Virginia requires any insurer that issues a policy of fire insurance or fire insurance in combination with other coverage that excludes coverage for damage due to flood, surface water, waves, tidal water, or any other overflow of a body of water to provide written notice that explicitly states (1) that flood damage is excluded; (2) that information about flood insurance is available from the insurer, the insurance agent, or the National Flood Insurance Program; and (3) that contents coverage is available on the flood policy for an additional premium. This notice applies to new and renewal policies.

### Insurance Credit Score Disclosure Notice

Any insurer issuing or delivering a homeowners or tenant policy that uses credit information contained in a consumer report for underwriting, tier placement, or rating an applicant or insured shall disclose, on the insurance application, at the time the application is taken, or at renewal if no previous notice has been given, the information required by [§ 38.2-2126 A](#) of the Code of Virginia.

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### Insurance Credit Score Adverse Action Notice

[Subsection A 2 of § 38.2-2126](#) of the Code of Virginia requires insurers that take adverse actions, based in whole or in part, upon credit information to provide notice to applicants or insureds (on owner-occupied and tenant residential property policies) that the adverse action was based in whole or in part on credit. The notice must also either provide a statement of the primary factors or characteristics that were used as the basis for the adverse action, or notify the applicant or insured that he may request such information. For the purposes of [§ 38.2-2126](#) of the Code of Virginia, an adverse action is defined as a denial, nonrenewal or cancellation of, an increase in any charge for or refusal to apply a discount, or placement in less favorable tier, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with underwriting, tier placement, or rating. Adverse action includes, but is not limited to, circumstances where the applicant or insured (i) did not receive the insurer's most favorable rate, (ii) was not placed in the insurer's best tier, and (iii) when there are multiple insurers available within a group of insurers, the applicant or insured did not receive coverage with the group's most favorably priced insurer. In the case of renewals, the circumstances listed in (i), (ii), and (iii) are not adverse actions if, due to the insured's credit information, the insured is not receiving a less favorable rate, or placed in a less favorable tier or company than during the policy period immediately preceding the renewal policy.

### Notice of Change in Deductible

[Section 38.2-2127](#) of the Code of Virginia requires an insurer to provide a written notice whenever it unilaterally changes the deductible on a policy written to insure an **owner-occupied dwelling** (homeowners and dwelling fire policies). The notice must (1) state that the deductible has changed and (2) explain how the new deductible will be applied. The law prohibits the insurer from changing the deductible except at renewal. *Insurers should be aware that the law is not limited to changes in the deductible because of the territory or location of the property. For example, if the insurer unilaterally changes the deductible because of the insured's loss history, the notice must be given.*

**NOTE:** Deductibles may only be unilaterally changed at renewal. Therefore, insurers are prohibited from changing a deductible unilaterally during the policy term, including the 90-day underwriting period once coverage is bound. Where the need arises to make a change in a deductible during the underwriting period, insurers must cancel the policy and offer to write with a different deductible. However, insurers may make changes, such as increasing deductibles or increasing limits, during the underwriting period if the insured agrees to such changes, or if the application, signed by the insured, advises the insured that the deductible may be changed.

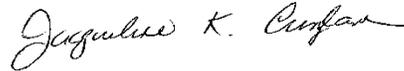
Earthquake Notice

Section 38.2-2129 of the Code of Virginia requires insurers issuing new or renewal policies of fire insurance, or fire insurance in combination with other insurance coverages, which exclude coverage for damage caused by earthquake, to provide a written notice that explicitly states "earthquake coverage is excluded unless purchased by endorsement." This notice must state that information regarding such coverage is available from the insurer or the agent if earthquake coverage is otherwise available from the insurer. Insurers may use notices that unambiguously set forth the information required by the law even if the language of the notice is not in the precise language that is quoted in the law.

Questions about this administrative letter should be directed to:

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Sincerely,



Jacqueline K. Cunningham  
Commissioner of Insurance

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