

# COMMONWEALTH OF VIRGINIA

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August 1, 2016

## Administrative Letter 2016-08

**To: All Property and Casualty Insurance Companies Licensed in Virginia and Rate Service Organizations Licensed in Virginia**

**Re: Amendments to § 38.2-231 of the Code of Virginia; Withdrawal of Administrative Letter 2006-12**

Chapter 4 of the 2016 Acts of the Assembly (House Bill 31) became effective immediately upon Governor McAuliffe's signature on February 23, 2016. House Bill 31 amends and reenacts a number of sections within Title § 38.2 of the Code of Virginia relating to notices required in certain insurance policies. This letter summarizes changes resulting from this legislation that insurers should take note of, and provides clarification and guidance, particularly with respect to the circumstances under which certain notices must be provided, and the methods by which insurers may verify proof of mailing of the notices. **This letter replaces Administrative Letter 2006-12, which is hereby withdrawn.**

House Bill 31 modifies the provisions of Virginia Code §§ 38.2-231, 38.2-2113, and 38.2-2208 by restoring an insurer's ability to use a certificate of mailing from the United States Postal Service (USPS) to demonstrate that a notice was mailed to the insured or lienholder, often referred to as "proof of mailing." These statutes apply to notices of cancellation or refusals to renew a policy, and, for policies subject to the provisions of § 38.2-231, to the notice of a premium increase greater than 25 percent, and notice of a reduction in coverage (collectively, "notice"). Bulk mailing is not a recognized proof of mailing method.

House Bill 31 also clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records for sending notices for one year, regardless of the method used. For more information regarding IMb Tracing™, please see the guidance document on the P&C Company webpage: [Guidance—Using IMb Tracing™ as Proof of Mailing](#).

### Issues on which the Bureau Most Frequently Receives Inquiries

#### **Insurer-Initiated Increases in Premium that Trigger a Notice to the Insured**

Subsection M of § 38.2-231 defines an insurer-initiated increase in premium as an increase in premium *other than* one resulting from changes in (i) coverage requested by the insured; (ii) policy limits requested by the insured; (iii) the insured's operation or location that result in a change in the classification of the risk; or (iv) the rating exposures including, but not limited to, increases in payroll, receipts, square footage, number of automobiles insured, or number of employees.

Examples of an insurer-initiated increase include an increase in the filed rates; changes

in experience or schedule rating resulting in an increase in premium; and, for claims-made policies, annual premium increases until the risk reaches a mature claims-made status.

To determine whether a notice is required, the insurer must first compare the renewal premium to the premium charged by the insurer at the effective date of the expiring policy. If the renewal premium has increased more than 25%, the insurer then must determine if its own actions have generated a premium increase greater than 25%. The insurer is only required to send notice when its own actions have caused the premium to increase more than 25%.

Section 38.2-231 states that the notice must either contain the specific reason for the increase or advise the insured of the specific reason for the increase and that the amount of the increase may be obtained from the agent or the insurer.

### **Effect of Failing to Provide a Notice of Insurer-Initiated Increase in Premium or Reduction in Coverage**

Subsection D of § 38.2-231 sets forth the procedures that an insurer must follow when proper notice of an increase in premium or reduction in coverage was not given. If proper notice is not given, the policy remains in effect for 45 days after written notice is mailed or delivered to the insured, unless the insured obtains replacement coverage or elects to cancel sooner. In either case, coverage under the prior policy ceases on the effective date of the replacement coverage or the elected date of cancellation. If the insured fails to accept or rejects the changed policy, coverage for any period that extends beyond the expiration date will be under the prior policy's rates, terms, and conditions as applied against the renewal policy's limits, rating exposures, and coverages.

### **Circumstances where Notice of Insurer-Initiated Increase in Premium or Reduction in Coverage Is Not Needed**

Subsection E of § 38.2-231 provides that the notice is *not* required if:

- the insurer delivers or mails to the named insured a renewal policy or a renewal offer not less than 45 days prior to the effective date or, in the case of medical malpractice insurance, not less than 90 days prior to the effective date of the policy;
- the policy is issued to a large commercial risk as defined in subsection C of § 38.2-1903.1 (except that policies of medical malpractice insurance are not exempt from the notice requirement); or
- the policy is retrospectively rated, where the premium is adjusted at the end of the policy period to reflect the insured's actual loss experience.

### **Policies to which Section 38.2-231 Applies**

Section 38.2-231 applies to all policies of insurance as defined in §§ 38.2-117 and 38.2-118 that insure a business entity, or policies of insurance that include in part insurance as defined in §§ 38.2-117 or 38.2-118 insuring a business entity. Section 38.2-231 also applies to policies of insurance as defined in § 38.2-124 insuring a business entity and to policies of insurance as defined in subsection B of § 38.2-111 insuring a business entity. Such policies include, but are not limited to, commercial automobile liability, commercial package policies (that include liability coverage), commercial general liability, professional liability, commercial umbrella, directors' and officers' liability, errors and omissions, employment related practices liability, pollution liability, gap insurance, and tuition refund policies.

(Please note that even if a *line* of insurance is exempt from rate filing requirements, the premium notice requirements still apply.)

**Policies to which § 38.2-231 Does Not Apply**

Section 38.2-231 does not apply to personal lines policies that have business exposures endorsed on them. For example, homeowners and private passenger automobile policies that cover some business exposure of the insured are governed by the termination provisions set forth in §§ 38.2-2114 and 38.2-2212, respectively.

The definition of a “policy of motor vehicle insurance” in subsection H of § 38.2-231 excludes policies issued through the Virginia Automobile Insurance Plan. Please refer to this subsection for additional exemptions.

**Specific Reason for Cancelling, Refusing to Renew, Initiating an Increase in Premium or Reduction in Coverage**

The insurer is required by § 38.2-231 to provide a specific reason for the cancellation, refusal to renew, insurer-initiated increase in premium or reduction in coverage that is clear enough for the insured to understand why the policy is being cancelled or non-renewed. The following examples are not considered specific reasons: “loss history,” “driving records,” “claims,” “prohibited risk,” “underwriting reason,” “loss history unacceptable,” “engineering report,” “inspection report,” or “loss ratio exceeds acceptable margin.”

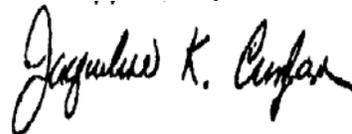
**Insurer Responsibilities When Moving Insureds from One Company to Another in a Group**

A non-renewal notice is required even when coverage is being offered by another insurer within the same group of insurers unless the affiliated insurer offers to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy and the affiliated insurer’s policy has the types and limits of coverage at least equal to those on the expiring policy. See [§ 38.2-231 A 3](#).

If you have any questions regarding this administrative letter, please contact:

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Sincerely,



Jacqueline K. Cunningham  
Commissioner of Insurance