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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

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TO: All Companies Licensed to Write Property and
Casualty Insurance

FROM: John G. Day *JG Day*
Commissioner

SUBJECT: Supplementary Guideline Number One Regarding
Implementation of Section 38.1-52(11) of the
Unfair Trade Practices Act Relating to Adverse
Underwriting Decisions.

The initial guidelines dated May 31, 1978 concerning the above-captioned matter indicated that the Bureau would be issuing periodic supplements that deal with various problems or issues concerning implementation of the law which were not covered by the initial guidelines or which arose subsequent to the issuance of the initial guidelines. This is the first supplement.

Types of Insurance Excluded from the New Law.

Several questions have been raised concerning the applicability of the new law to certain lines of insurance that have not traditionally been considered personal lines. It is the opinion of the Bureau of Insurance that Section 38.1-52(11) relating to adverse underwriting decisions does not apply to the following lines of insurance: (1) credit mortgage guaranty insurance under group policies where the named or principal insured is not a natural person, e.g., a bank; and (2) title insurance.

Questions also have been raised regarding the applicability of the law to fidelity and surety bonds. In most instances, the law does not apply to such bonds since they are usually obtained for business reasons. However, when such bonds are obtained for personal rather than

business reasons (e.g., a personal appeal bond), the new law is applicable. The distinction between personal and business purposes is difficult to draw with precision. For example, if one must obtain a bond to act as the administrator of one's family estate or as a guardian for a minor, a legitimate question arises as to whether the purpose of the insurance should be categorized as a business or personal one. Also, a question arises as to the effect of receiving or waiving a fee for the task which is bonded. It is the opinion of the Bureau that every purpose involving a fidelity or surety bond where a person is entitled to a fee (irrespective of whether it is received or not) is business rather than personal in nature, and therefore, not subject to the new law.

Cancellation for Non-Payment of Premium.

Cancellation for non-payment of premium was originally treated as an adverse underwriting decision requiring notice under the new law. As a result, a number of problems have been experienced by companies and agents.

It is the opinion of the Bureau that this specialized form of cancellation should not be subject to the precise notice requirements applicable to adverse underwriting decisions. This is so for three reasons: (1) the existing notice of cancellation for non-payment states the specific reason for the action taken; (2) the information supporting the reason is known by the insured without access to the company files; and (3) requiring the standard adverse underwriting notice to be included in notices of cancellation for non-payment would create an undue administrative burden.

Accordingly, a notice of cancellation for the reason of non-payment of premium which does not contain the notice required by Section 38.1-52(11) but which complies with all other applicable laws will be deemed effective by the Bureau of Insurance. Companies should note, however, that the Bureau's opinion, while relevant, is not binding in a court of law.

The Fair Plan.

Whenever a policy issued by the Fair Plan comes up for renewal, a new application must be forwarded to the Fair Plan signed by the insured or the insured's authorized

representative. The Fair Plan regulations state that the producer of record may not be the authorized representative.

Because of the fact that the Fair Plan issues its own policy and each renewal requires a separate application, it is the opinion of the Bureau that each renewal is an adverse underwriting decision requiring the use of the standard adverse underwriting notice.

If a notice does not accompany a renewal application because of some oversight, the application may still be processed. However, the Fair Plan must keep a record of applications not accompanied by the required notice in order to facilitate Bureau compliance review. The record of applications not accompanied by the notice will set forth the name of the applicant and the producer of record, if any.

Charges for Copying of Records.

The law allows insurance institutions to charge a reasonable fee for the copying of records. However, a flat fee in each and every case is not reasonable since the rate must be related to the actual cost involved. A per page charge or other standard related to volume or cost is acceptable.

If fees are charged, the release of records may be conditioned upon the payment of the fees in advance.

Confidential Claims Information.

It is the opinion of the Bureau that the law requires disclosure of claims information if it is used for underwriting purposes.

Some have maintained that this is unfair because it could unduly prejudice pending claims. While there is some merit to this position, there is also merit to the argument that an individual is entitled to any information that is used to justify an adverse underwriting decision against him, irrespective of the source of this information. In addition, a company may avoid prejudicing pending claims by refraining from using information for underwriting purposes which it does not wish to disclose.

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